

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**  
DEC 31 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES R. BURK,

Defendant.

CIVIL ACTION NO. 84-C-483-B

DEFAULT JUDGMENT

This matter comes on for consideration this 31 day  
of December, 1984, the Plaintiff appearing by Layn R.  
Phillips, United States Attorney for the Northern District of  
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States  
Attorney, and the Defendant, Charles R. Burk, appearing not.

The Court being fully advised and having examined the  
file herein finds that Defendant, Charles R. Burk, was served  
with Summons and Complaint. Defendant filed his Answer herein on  
June 7, 1984. This matter was set for a non-jury trial on  
December 26, 1984, and Defendant was duly notified but he failed  
to appear. Plaintiff is therefore entitled to Default Judgment  
herein against the Defendant.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the  
Plaintiff have and recover judgment against the Defendant,  
Charles R. Burk, in the amount of \$358.63 (less the amount of  
\$5.00 which has been paid), plus interest at the rate of 15.05  
percent per annum and administrative costs of \$.61 per month from  
August 12, 1983, and \$.68 per month from January 1, 1984, until

*Entered*

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

ANITA NESBITT and  
STEWART NESBITT,  
Individually and as  
Husband and Wife,

Plaintiffs,

vs.

UNIVERSITY MANSION OF  
TULSA COMPANY d/b/a  
UNIVERSITY CLUB TOWERS,  
a Limited Partnership  
and STEPHEN HOLZEL,  
General Partner,

Defendants,

vs.

U.S. ELEVATOR  
CORPORATION, a wholly  
owned subsidiary of  
the CUBIC CORPORATION,

Defendants.

No. 82-C-700-B

DISMISSAL WITH PREJUDICE

NOW on this 31<sup>st</sup> day of December, 1984, comes on for  
hearing before me, the United States District Judge for the  
Northern District of Oklahoma, upon Plaintiff's Application  
To Dismiss Case No. 82-C-700-B with prejudice to Plaintiff's  
rights to refile.

The Court having been advised by the parties that a  
settlement has been reached in the matter dismisses this  
cause with prejudice to Plaintiff's rights to refile.

S/ THOMAS R. BRETT

---

UNITED STATES DISTRICT  
JUDGE FOR THE NORTHERN  
DISTRICT OF OKLAHOMA

*Entered*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**E D**

*DEC 31 1984*

PATRICIA RHEA, as mother and )  
next friend of JOHN MARK RHEA, )  
a minor 17 years of age, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
THE UNITED STATES OF AMERICA, )  
 )  
Defendant. )

No. 83-C-916-B

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered herein this date, Judgment is hereby entered in favor of the plaintiff, Patricia Rhea, as mother and next friend of John Mark Rhea, a minor 17 years of age, and against the defendant, The United States of America, in the total sum of Thirty Thousand Nine Hundred Sixty Nine and 96/100 Dollars (\$30,969.96), plus the costs of this action, and interest at the rate of 4% per annum. 28 U.S.C. §2411(b).

ENTERED this 31st day of December, 1984.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

*Entered*  
**FILED**

IN THE UNITED STATES DISTRICT COURT DEC 28 1984  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

MESA PARTNERS,

Plaintiff,

v.

DOWNING PROPANE & OIL, INC.,  
BENTON OIL COMPANY, and  
JUDGE W. M. THOMAS,

Defendants.

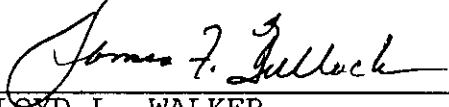
No. 84-C-1006-E

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, Mesa Partners, by and through the undersigned, and notifies the Court and the Defendants of dismissal of this action. In accordance with Rule 41(a)(1)(i), Plaintiff would show that as of this date, no answer or motion for summary judgment has been served by any adverse party.

PRAY, WALKER, JACKMAN  
WILLIAMSON & MARLAR

By

  
\_\_\_\_\_  
FLOYD L. WALKER  
JAMES F. BULLOCK  
2200 Fourth National Building  
Tulsa, Oklahoma 74114  
(918) 584-4136

Counsel for Plaintiffs  
Mesa Petroleum Co., et al

OF COUNSEL:

BAKER & BOTTS  
One Shell Plaza  
Houston, Texas

FELLERS, SNIDER, BLANKENSHIP,  
BAILEY & TIPPENS  
2700 First National Center  
Oklahoma City, Oklahoma 73102

CERTIFICATE OF SERVICE

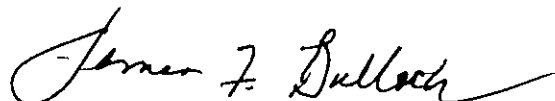
I hereby certify that on the 28th day of December, 1984 a true, correct and exact copy of the within and foregoing instrument was placed in the U.S. mail with sufficient postage affixed thereto and properly addressed to the following parties:

Ronald N. Ricketts  
GABLE & GOTWALS  
2000 Fourth National Bldg.  
Tulsa, Oklahoma 74119  
COUNSEL FOR BENTON OIL COMPANY

Paul E. Blevins  
BLEVINS & DENNIS, INC.  
Post Office Box 870  
Pryor, Oklahoma 74362  
COUNSEL FOR DOWNING PROPANE  
& OIL, INC.

Honorable W. M. Thomas  
ASSOCIATE DISTRICT JUDGE  
Mayes County Courthouse  
Pryor, Oklahoma 74361

with proper postage thereon fully prepaid.

  
\_\_\_\_\_  
JAMES F. BULLOCK

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

DEC 28 1984

No. 84-C-608-E

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

UNITED STATES FIDELITY & GUARANTY COMPANY,  
Plaintiff,

vs.

JOHN M. HORNER, BETTY JANE JACKSON,  
ROBERT K. SHIVEL, JR., SHELLEY K.  
MAGANA, SHELTER MUTUAL INSURANCE  
COMPANY and ALLSTATE INSURANCE  
COMPANY,  
Defendants,  
and

84-C-608-E ✓

GROVER L. GORRELL,  
Third Party Defendant.

AGREED JOURNAL ENTRY OF JUDGMENT

Now on this 28 day of December, 1984, this cause came on for hearing pursuant to regular assignment. The Plaintiff appeared by and through its attorney, Knight, Wagner, Stuart, Wilkerson & Lieber by John B. Stuart. The Defendants, John M. Horner and Betty Jane Jackson appeared by and through their attorneys of record, Heskett, Heskett, Daniel, Esser & Woodyard by Jack Heskett. The Defendants, Robert K. Shivel, Jr. and Shelley K. Magana, having been properly served, and having failed to disclaim and having failed to appear and answer are in default and a default judgment is entered against each of them herein. The Defendant Shelter Mutual Insurance Company appears by and through its attorney Best, Sharp, Thomas, Glass

& Atkinson by Joseph H. Paulk. The Defendant, Allstate Insurance Company appears by and through its attorney, Jack Heskett. The Court finds that the law office of Dick Gibbon initially filed an entry of appearance on behalf of Allstate but by and through representation of counsel, the Court finds that Jack Heskett has now taken over the representation of Allstate in its entirety for purposes herein. The Defendant Grover L. Gorrell appears by and through his attorney, James E. Poe.

The Court further finds that there is complete diversity of citizenship between the Plaintiff and the Defendants and Third Party Defendant herein and the amount in controversy exceeds Ten Thousand Dollars (\$10,000.00) exclusive of interest and costs. The Court also finds that authority exists for bringing this Complaint for Interpleader by virtue of Rule 22 of the Federal Rules of Civil Procedure.

The Court further finds that the Plaintiff issued a policy of insurance, No. DPA1550325268 to Grover L. Gorrell, providing a policy period from August 10, 1983 to February 10, 1984, wherein it provided that there would be a single limit coverage for combined bodily injury and property damage in the amount of Seventy-Five Thousand Dollars (\$75,000.00) and that same applies to the accident involved herein which occurred on or about October 20, 1983.

The Court further finds that the Plaintiff has tendered unto the Court clerk its draft No. 18-810742-9 dated June 25, 1984, payable to the Court Clerk, United States District Court for the Northern District in the sum of Seventy-Five Thousand Dollars (\$75,000.00), the applicable policy limit herein, for the accident involved herein and same has been deposited in an interest bearing account as full payment of its obligation to its insured, requesting from this Court an Order disbursing said funds as the Court deems just and proper.

The Court further finds that the parties, by and through their respective counsel have agreed that the proceeds of the Seventy-Five Thousand Dollars (\$75,000.00) payment plus accumulated interest deposited with the Court Clerk, shall be disbursed as follows: i.e., sum of Five Thousand Eight Hundred and One Dollars and Eighty-Five Cents (\$5,801.85) to Defendant Shelter Mutual Insurance Company, together with an attorney fee in the amount of Three Hundred Dollars (\$300.00) to Best, Sharp, Thomas, Glass & Atkinson; the sum of Seven Thousand Three Hundred and Thirty-Five Dollars (\$7,335.00) to Defendant Allstate Insurance Company, the sum of \$ 840.00 as an attorney fee to Knight, Wagner, Stuart, Wilkerson & Lieber; leaving a balance, after payment to the insurance companies of Sixty Thousand Seven Hundred and Twenty-three Dollars and Fifteen Cents (\$60,723.15) plus accumulated interest. The parties further



agree that of the existing balance plus accumulated interest shall go one-fourth of same to the Defendant John M. Horner and the remaining three-fourths shall go to the Defendant, Betty Jane Jackson.

The Court further finds that the Defendants, John M. Horner, Betty Jane Jackson, Allstate Insurance Company and Shelter Mutual Insurance Company, in consideration of the aforementioned payments hereby and forever release and hold harmless Grover L. Gorrell and United States Fidelity & Guaranty Company, their heirs, assigns, agents and representatives for any and all claims arising out of the accident of October 20, 1983 and agree to hold harmless and indemnify Grover L. Gorrell and United States Fidelity and Guaranty Company on any future claims.

The Court further finds that the Defendant Shelter Mutual Insurance Company and the Defendant Allstate Insurance Company and Grover L. Gorrell, by virtue of the aforementioned payment are forever restrained and prohibited from asserting their Cross Claims or Complaints against the Plaintiff and each Cross Claim or Complaint filed against the Plaintiff are hereby dismissed with prejudice.

The Court further finds that the Plaintiff is hereby relieved from any and all liability on account of the

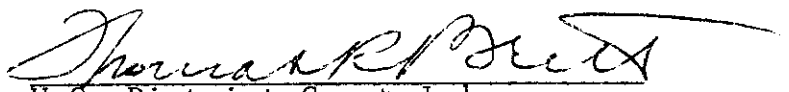
aforementioned accident and its liability insurance policy coverage referred to herein and the Plaintiff is further found by the Court to have complied with any and all obligations of defense as well as any and all obligations of payment and is found to have satisfied all conditions precedent on its part under the policy and is found to have done everything required of it for which it is obligated under said policy, thereby relieving USF&G from any and all claims of those claiming pursuant to said policy and/or those attempting to make a claim hereafter.

The Court further finds that the Plaintiff be relieved of any and all liability in excess of its contractual limits of liability coverage. The Court further finds that the distribution of the policy funds as aforementioned is fair, reasonable and equitable. The Court further finds that the Defendants be permanently restrained and enjoined from bringing any suit or action or pursuing any that might already be pending against Grover L. Gorrell on account of the accident of October 20, 1983. The Court further finds that the Defendants be permanently restrained and enjoined from sharing or participating in the fund tendered other than is set forth herein and that judgment be entered accordingly. The Court further finds that the Defendants Robert K. Shivel, Jr. and Shelley K. Magana are

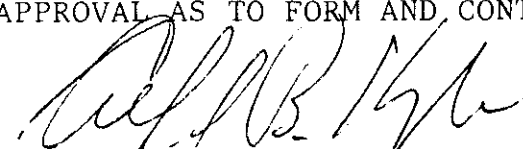
in default and are permanently restrained and enjoined from sharing or participating in the fund tendered into Court by the Plaintiff and are further permanently restrained and enjoined from bringing any suit or action or pursuing any that already might be pending against Grover L. Gorrell. The Court further finds that the Plaintiff and Grover L. Gorrell are relieved from any and all liability on account of this accident and the liability insurance policy coverage herein as to the Defendants, Magana and Shivel and the Court finds that the Plaintiff has satisfied all conditions precedent on its part under the policy and has done everything required of it for which it is obligated under the policy as to said Defendants.

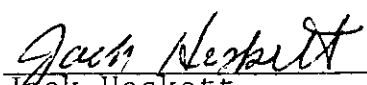
The Court further orders that the Plaintiff be forever discharged from any and all existing and any and all future liability to the Defendants and Third Party Defendant or any of them, or to those claiming under them, or to those who may claim in the future and that the Plaintiff be awarded its costs and reasonable attorney fees in the amount of \$ 840.00 .

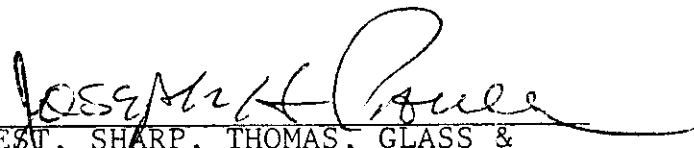
JUDGMENT IS THEREFORE ENTERED UPON EACH OF THE AFOREMENTIONED FINDINGS OF THE COURT AS IF EACH WERE REPEATED VERBATIM HEREIN.

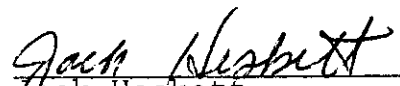
  
U.S. District Court Judge  
for James E. Ellison

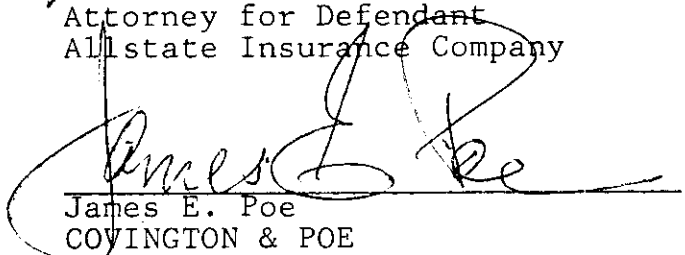
APPROVAL AS TO FORM AND CONTENT:

  
KNIGHT, WAGNER, STUART,  
WILKERSON & LIEBER,  
Attorneys for Plaintiff

  
Jack Heskett  
HESKETT, HESKETT, DANIEL & ESSER  
Attorney for Defendants, John M.  
Horner and Betty Jane Jackson

  
BEST, SHARP, THOMAS, GLASS &  
ATKINSON,  
Attorney for Defendant,  
Shelter Mutual Insurance Company

  
Jack Heskett  
HESKETT, HESKETT, DANIEL & ESSER  
Attorney for Defendant  
Allstate Insurance Company

  
James E. Poe  
COVINGTON & POE  
Attorney for Defendant  
Grover L. Gorrell

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 27 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

LAWYERS TITLE INSURANCE COMPANY, )  
)  
Plaintiff, )

v. )

No. 76-C-456-BT

BERT M. JONES, JOHN H. TUCKER, )  
JOSEPH R. ROBERTS, GEORGE W. )  
GABLE, E.D. HIERONYMUS and )  
CHRIS L. RHODES, III, Co-Partners, )  
and RHODES, HIERONYMUS, HOLLOWAY )  
and WILSON, )  
Defendants. )

JUDGMENT

In keeping with the Court's order of December 18, 1984,  
judgment is hereby entered in favor of defendants, Bert M. Jones,  
John H. Tucker, Joseph R. Roberts, George W. Gable, E.D. Hieronymus,  
and Chris L. Rhodes, co-partners and Rhodes, Hieronymus, Holloway,  
and Wilson, and against plaintiff, Lawyers Title Insurance Company,  
with costs awarded in favor of defendants.

ENTERED this 27<sup>th</sup> day of December, 1984.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

Entered

OBA # 5026

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 27 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JERRY MORRIS,

Plaintiff,

-vs-

LARRY PURYEAR, and the  
CITY OF COMMERCE, OKLAHOMA,  
a municipal corporation,

Defendants.

No. 83-C-1053-B

ORDER DISMISSING WITH PREJUDICE THE CITY OF COMMERCE

ON this 26 day of December, 1984, the Joint Application for Dismissal With Prejudice of the City of Commerce came on before the Court for hearing. The Court finds that a settlement agreement has been reached in regard to the City of Commerce wherein the City of Commerce will be dismissed with prejudice. The Court further finds that the \$50,000.00 settlement paid by the City of Commerce will act as a release of any judgment for actual damages and costs rendered in favor of Jerry Morris and against co-defendant Larry Puryear. That no part of said \$50,000.00 payment will be used to satisfy any punitive judgment rendered against Larry Puryear. The Court further finds that the plaintiff reserves his cause of action against the defendant Larry Puryear.

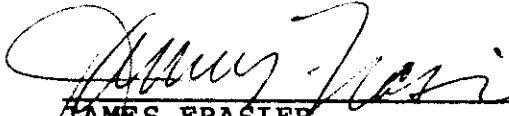
IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the City of Commerce is dismissed with prejudice and that plaintiff's cause of action against Larry Puryear is reserved from this

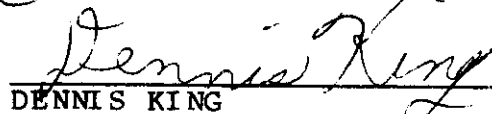
dismissal and plaintiff is entitled to proceed against Larry  
Puryear.


S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

  
JAMES FRASIER  
Attorney for Plaintiff

  
DENNIS KING  
Attorney for Defendant, City  
of Commerce

  
DONALD BINGHAM and RON HIGNIGHT  
Attorney for Defendant Puryear

*Entered*

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

**DEC 27 1984**

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

KARI A. HILTON,

Plaintiff,

vs.

SAFARI MANAGEMENT CO., a  
corporation, d/b/a HOLIDAY  
INN CENTRAL,

Defendants.

No. 84-C-426-B

O R D E R

ON this 26 day of December, 1984, the joint application of the parties hereto for an order dismissing the Plaintiff's cause of action against the Defendant comes on for hearing before the undersigned Judge. After finding that the parties have reached a full, final and complete settlement of all the Plaintiff's claims against the Defendant, the Court finds that the Plaintiff's claims against the Defendant should be dismissed with prejudice to re-filing of the same. In that respect, this dismissal with prejudice shall be applicable to any and all claims the Plaintiff could have filed against the Defendant in relation to this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff's action against the Defendant is dismissed with prejudice as to the re-filing of the same, and that the Plaintiff is barred from filing any future causes of action against the Defendant that could have been filed in relation to this matter.

S/ THOMAS R. BRETT

Judge Thomas R. Brett



Entered

FILED

DEC 27 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UTICA NATIONAL BANK & TRUST )  
COMPANY, a national banking )  
association, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ARTHUR D. CANDLAND & ASSOCIATES, )  
INC., a Utah corporation, and )  
ARTHUR D. CANDLAND, an individual, )  
 )  
Defendants. )

Case No. 83-C-903-B

JUDGMENT

The Plaintiff, Utica National Bank & Trust Company, having filed its Complaint demanding monetary damages based upon the default of the Defendants, Arthur D. Candland & Associates, Inc., and Arthur D. Candland, under certain promissory notes and the personal guaranty of Arthur D. Candland, all as appears more fully in said Complaint and the prayer for relief therein, and the Plaintiff and Defendants having agreed upon a basis for the judgment of the matters alleged in the Complaint and the entry of a judgment in this action and having entered into a Stipulation, the original of which has been filed with the Court, and due deliberation being had thereon, the Court finds as follows:

1. The Plaintiff is entitled to judgment against the Defendants on Count I of its Complaint in the principal amount of \$150,000, together with interest accrued thereon through October 17, 1983, in the amount of \$29,562.50 and interest accrued and

accruing thereafter at a rate of 4½% per annum in excess of the Base rate of Utica National Bank & Trust Company.

2. The Plaintiff is entitled to judgment against Defendant Arthur D. Candland on Count II of its Complaint in the principal amount of \$80,000, together with interest accrued thereon through October 17, 1983, in the amount of \$18,356.55 and interest accrued and accruing thereafter at a rate of 4½% per annum in excess of the Base rate of Utica National Bank & Trust Company.

3. The Plaintiff is entitled to judgment against Defendant Arthur D. Candland on Count III of its Complaint in the principal amount of \$94,445.92, together with interest accrued and accruing thereon through October 17, 1983, in the amount of \$1,947.45 and interest accrued and accruing thereafter at a rate of 4½% per annum in excess of the Base rate of Utica National Bank & Trust Company.


IT IS SO ORDERED, ADJUDGED, AND DECREED.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Approved as to form:


DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By   
Lewis N. Carter  
1000 Atlas Life Building  
Tulsa, OK 74103  
(918) 582-1211

ATTORNEYS FOR PLAINTIFF

McKINNEY, STRINGER & WEBSTER

By

  
David A. Cheek  
Tenth Floor  
City Center Building  
Main and Broadway  
Oklahoma City, OK 73102

ATTORNEYS FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BILLY J.C. INGRAM and )  
MARSALETE INGRAM, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
FIBREBOARD CORPORATION, )  
et al., )  
 )  
Defendants. )

No. 83-C-890-B

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

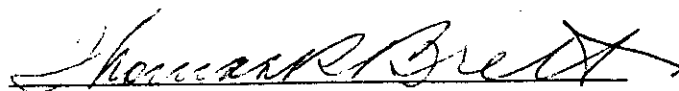
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DEC 27 1984

ORDER

In its Amendment of Findings of Fact and Conclusions of Law, filed this date, the Court concluded neither Johns-Manville Sales Corporation nor defendant Unarco Industries, Inc., both of whom were named in the complaint, were ever issued or served summons or process in this matter. The case has been concluded with regard to all other named parties. Therefore, the Court orders dismissal of named defendants Johns-Manville Sales Corporation and Unarco Industries, Inc.

ENTERED this 27<sup>th</sup> day of December, 1984.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

- Entered

5/11/83

JUL 27 1983

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

TOM ROMAN and BRANDI ROMAN,

Plaintiffs,

vs.

LEROY VANZANT, individually,  
and as LEROY VANZANT, d/b/a  
VANZANT TRANSIT COMPANY,

Defendants.

No. 83-C-579-BT

Notice of  
DISMISSAL

COME NOW the Plaintiffs, TOM ROMAN and BRANDI ROMAN, and  
Dismiss their causes of action against the Defendants, LEROY  
VANZANT, individually, and as LEROY VANZANT, d/b/a VANZANT TRANSIT  
COMPANY, without prejudice to refiling.

GILDER & GILDER, INC.

BY: Norman Gilder

NORMAN GILDER - OBA #3368

220 Beacon Building  
Tulsa, Oklahoma 74103  
Telephone: 537-4436

ATTORNEYS FOR PLAINTIFFS

FILED

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

DEC 27 1984

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

CHAMPION FINANCIAL CORP.,  
a California corporation,

Plaintiff,

vs.

No. 77-C-526-C

THE MARINA LIMITED, an  
Oklahoma limited partnership,

Defendant.

JUDGMENT VESTING TITLE TO REAL AND PERSONAL  
PROPERTY IN CHAMPION FINANCIAL CORPORATION,  
A CALIFORNIA CORPORATION, AND DIVESTING TITLE  
FROM THE MARINA LIMITED, AN OKLAHOMA LIMITED  
PARTNERSHIP

NOW, on this 27<sup>th</sup> day of December, 1984, the Court, hereby  
and by these presents, vests Champion Financial Corporation, a  
California corporation, with title and divests title of and from  
The Marina Limited, an Oklahoma limited partnership, in and to  
following real and personal property, to-wit:

- (a) The following described real estate situated in  
Tulsa County, State of Oklahoma, to-wit:

Lots 2 and 3 of Block 39 and Lots 1, 2 and  
3 of Block 40, LONGVIEW LAKE ESTATES, a  
subdivision of a part of the West Half  
(W/2) of the Northwest Quarter (NW/4) of  
Section 18, Township 19 North, Range 14 East  
and part of the East Half (E/2) of the East  
Half (E/2) of the Northeast Quarter (NE/4)  
of Section 13, Township 19 North, Range 13  
East of the Indian Base and Meridian in the

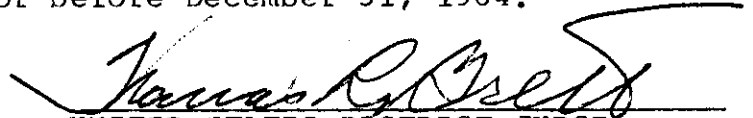
City of Tulsa, County of Tulsa, State of Oklahoma.  
A portion of Community Development Plan No. 21,

together with,

- (b) All personal property including:  
all tangible personal property which is owned by the Grantor and located on the Real Property, which personal property is used in the ownership, operation or maintenance of the Real Property and the buildings and improvements located thereon, including, without limitation, all equipment, machines, engines, boilers, dynamos, elevators, stokers, tanks, all awnings, screens, cabinets, shades, blinds, carpets, draperies, furniture and furnishings, and all plumbing, heating, air conditioning, lighting, ventilating, refrigeration, cooling, sprinkler and incinerating equipment and all fixtures and appurtenances thereto; (ii) all intangible personal property owned by the Grantor and used in the ownership, operation or maintenance of the Real Property and the buildings and improvements located thereon, including, without limitation, all contract rights, escrow accounts, all rights and claims under all insurance policies pertaining to the property, deposits, instruments, documents of title, business records pertaining to said buildings, improvements and Real Property, and general intangibles, including, without limitation, all of Grantor's right, title, and interest in and to the names "The Marina", and "The Marina Apartments" and any derivatives thereof; (iii) all leases of tenants for occupancy of the buildings located upon the Real Property and all rentals and deposits (whether security deposits or otherwise) payable thereunder; (iv) all warranties, guarantees and service agreements with respect to any items of personal property used in said buildings located upon the Real Property; and, (v) all other contracts of whatsoever nature covering the ownership, operation and maintenance of the Real Property and the buildings and improvements thereon.

BE IT FURTHER ORDERED, ADJUDGED AND DECREED that Champion Financial Corporation convey and deliver to The Marina Limited, c/o Charles Norman, Kennedy Building, Tulsa, Oklahoma 74103, the

Purchase Money Promissory Note and Purchase Money Mortgage and  
Security Agreement (copies of which are attached as Exhibits  
"1" and "2" respectively) on or before December 31, 1984.

  
UNITED STATES DISTRICT JUDGE



PURCHASE MONEY PROMISSORY NOTE

\$1,100,000.00

Tulsa, Oklahoma  
\_\_\_\_\_, 1984

FOR VALUE RECEIVED, the undersigned Maker, promises to pay to the order of THE MARINA, LTD., an Oklahoma limited partnership, in care of Roger Hardesty, sole general partner, at his office at 4606 South Garnett Road, Tulsa, Oklahoma 74145, or at such other place as the holder hereof may designate in writing, the principal sum of One Million One Hundred Thousand Dollars (\$1,100,000.00), in lawful money of the United States of America, together with interest thereon at the rate of 8.5% per annum, with interest payable monthly, commencing on the first day of the month from and after the date hereof, and continuing monthly thereafter for a period of seven (7) years, when all sums of principal and interest then unpaid shall be due. In addition to said monthly interest payments the principal amount of Three Hundred Thousand Dollars (\$300,000.00) shall be due and payable seventy (70) days from the date hereof.

The Maker shall have the right to prepay this Note in whole or in part at any time without penalty.

Payment of this Note is secured by a Mortgage and Security Agreement covering property located in Tulsa County, Oklahoma, and this Note is to be construed according to the laws of the State of Oklahoma.

All parties waive protest, notice of protest, presentment, demand and diligence in collection and agree that this Note may be renewed or extended from time to time and for any term or terms by agreement between Maker and the holder without notice to others and all parties shall remain bound in the same capacities as prior thereto upon each such event. The holder may permit additions, substitutions and releases of collateral and may release any one or more secondary parties without discharging any other. If this Note be placed with any attorney(s) for collection upon any default all parties severally agree to pay the reasonable attorney fees and all lawful collection costs of the holder.

If all or any portion of the indebtedness hereby evidenced is not paid when due, or in the event of default in performance of any agreement herein contained or otherwise made to the holder hereof, the holder may, without notice or demand, declare this indebtedness and any other obligations of the undersigned owing to the holder to be immediately due and payable, and the holder may immediately exercise the right of setoff and enforce any lien or security interest securing payment hereof. The foregoing is in addition to rights of acceleration which may be provided in any loan agreement, security agreement, mortgage and/or other writing relating to indebtedness evidenced hereby.

Anything to the contrary herein or in the mortgage which this note secures, notwithstanding, Maker shall have a period of three months from the commencement of foreclosure proceedings and the mailing by certified mail to Maker of written notice of default during which to reinstate this note, by paying all delinquent payments, interest thereon at the rate of 10% per annum from the date due to the date paid, and the reasonable expenses and attorney fees of holder.

IN WITNESS WHEREOF, the undersigned has executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 1984.

CHAMPION FINANCIAL CORPORATION,  
a California corporation

By: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

PURCHASE MONEY MORTGAGE AND SECURITY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT CHAMPION FINANCIAL CORPORATION, a California corporation, hereinafter called the Mortgagor, whether one or more, in consideration of the sum of One Dollar and other valuable considerations, and for the purpose of securing the payment of the indebtedness hereinafter described and all extensions, renewals, substitutions, and changes in form thereof, together with all interest, charges and fees thereon, does by these presents grant, bargain, sell, convey, and mortgage unto THE MARINA, LTD., an Oklahoma limited partnership, hereinafter called Mortgagee, its successors and assigns forever, the following described real estate situated in the County of Tulsa, State of Oklahoma, to-wit:

Lots 2 and 3 of Block 39 and Lots 1, 2 and 3 of Block 40, LONGVIEW LAKE ESTATES, a subdivision of a part of the West half (W/2) of the Northwest quarter (NW/4) of Section 18, Township 19 North, Range 14 East and part of the East half (E/2) of the East half (E/2) of the Northeast quarter (NE/4) of Section 13, Township 19 North, Range 13 East of the Indian base and meridian in the City of Tulsa, County of Tulsa, State of Oklahoma. A portion of Community Development Plan No. 21,

together with all and singular the tenements, hereditaments, and appurtenances thereof; all buildings and improvements now or hereafter constructed thereon; and all chattels, fixtures, goods to become fixtures, and articles of tangible and intangible personal property now owned or hereafter acquired by the Mortgagor and now or hereafter located in or used for the operation and maintenance of the aforesaid buildings and improvements including, but not limited to, furnaces, steam boilers, hot-water boilers, oil burners, pipes, radiators, air-conditioning and sprinkler systems, gas and electric fixtures, carpets, rugs, shades, awnings, screens, elevators, motors, dynamos, cabinets, incinerators, lawn plants and shrubbery and all other furnishings, tools, equipment and machinery, appliances, building supplies, materials, fittings and fixtures of every kind, all of which real estate, fixtures and personal property are hereinafter collectively called the "Premises", and are hereby declared to be subject to the lien of this Mortgage and Security Agreement (herein called the "Mortgage") as security for payment of the aforesaid indebtedness.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, unto the said Mortgagee, its successors and assigns forever. And the said Mortgagor, for Mortgagor and for Mortgagor's successors and assigns, does hereby covenant to and with the said Mortgagee, its successors and assigns, that at the delivery hereof the said Mortgagor is the lawful owner and in possession of the premises aforesaid and is seized of a good and indefeasible estate of inheritance therein, free and clear of all encumbrances of every nature and kind whatsoever, except the First Mortgage to New York Life Insurance Company, a corporation, in the original principal amount of Four Million Seven Hundred Thousand Dollars (\$4,700,000.00) and that this Mortgage is in all respects expressly subordinate to such First Mortgage; that said Mortgagor has good right and authority to convey and encumber the same; and that said Mortgagor will WARRANT AND DEFEND the same in the quiet and peaceable possession of said Mortgagee, its successors and assigns, forever, against the lawful claims and demands of all persons whomsoever.

This conveyance is intended as a mortgage and is given as security for the performance of the covenants herein and the payments to THE MARINA, LTD., its successors or assigns, of the principal sum of ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$1,100,000.00) according to the terms and conditions of the purchase money promissory note made and executed by Mortgagor, to-wit:

Purchase Money Promissory note of even date in the principal sum of One Million One Hundred Thousand Dollars (\$1,100,000.00) together with interest thereon at the rate of 8.5% per annum, with interest payable monthly, commencing on the first day of the month from and after the date hereof, and continuing monthly thereafter for a period of seven (7) years, when all sums of principal and interest then unpaid shall be due. In addition to said monthly interest payments the principal amount of Three Hundred Thousand Dollars (\$300,000.00) shall be due and payable seventy (70) days from the date hereof,

and for the payment of all extensions, renewals, substitutions and changes in form of said indebtedness (which may be made from time to time and for any term or terms, with or without notice to Mortgagor).

This Mortgage does not secure any future advances or other obligations which now or may hereafter exist from Mortgagor to Mortgagee.

And for the consideration aforesaid the said Mortgagor does hereby covenant, promise, and agree to and with the said Mortgagee that in case the said Mortgagor shall neglect or fail to pay the indebtedness hereby secured or the premium for insurance, or neglect or fail to pay the taxes or assessments as hereinafter stipulated, or fail to keep said Premises in good repair or suffer or permit any waste thereon, then and in that case, it shall be lawful for the said Mortgagee to take possession of said Premises, and the said Mortgagor, in such case, does hereby bargain, sell, assign, transfer, and set over unto the said Mortgagee, all the rents and moneys which, until the full payment of the said note and interest thereon and the full and complete performance of all covenants herein contained, shall accrue and be owing for the use and occupation of the said Premises and of all the buildings thereon or of any part thereof; and for the purpose aforesaid during the time last aforesaid, the said Mortgagor does hereby nominate, constitute, and appoint the said Mortgagee the said Mortgagor's attorney in fact, irrevocably in the said Mortgagor's name or otherwise to take possession of said Premises and buildings and to let and lease the same and to receive, collect, and receipt for all sums due or owing for such use and occupation as the same accrue; and out of the amount so collected to pay the interest which shall be due and which shall accrue upon the note aforesaid and pay and discharge all taxes, assessments and premiums for insurance upon said premises and the cost of all such repairs upon said buildings and premises as said Mortgagee may deem necessary, so far as the sum so collected by it shall be sufficient for that purpose, paying the overplus from time to time, if any there be, to the said Mortgagor or assigns, and for its services in so leasing and letting said Premises and collecting said rents, the said Mortgagee shall be entitled to receive and shall deduct from said moneys the sum of five per cent of the amount by it collected.

IT IS HEREBY AGREED that all covenants and stipulations in these presents contained shall bind the successors and assigns of the Mortgagor and shall inure to the benefit of and be available to the successors and assigns of the Mortgagee. It is further agreed that granting any extension or extensions of time of payment of said note either to the maker or to any other person, or taking of

other or additional security for payment thereof, or waiver of or failure to exercise any right to mature the whole debt under any covenant or stipulation herein contained shall not in anywise affect this mortgage or the rights of the Mortgagee, its successors or assigns hereunder nor operate as a release from any personal liability upon said note nor under any covenant or stipulation herein contained. And further, the Mortgagor does hereby expressly covenant, stipulate, and agree as follows:

First: To pay the above recited debt and interest thereon when and as the same shall become due whether in due course or under any covenant or stipulation herein contained.

Second: Until said debt and all other sums hereby secured are fully paid, to keep the buildings and improvements on said premises constantly insured against loss by fire, lightning and wind-storm, in Companies and in a manner satisfactory to the Mortgagee, its successors or assigns, for their full insurable value. All policies of insurance covering the physical condition of the premises shall provide that the mortgagee, its successors and assigns, shall be an additional loss payee. In the event of any physical damage or loss at the premises which is covered by insurance, the mortgagor shall have the option of using any and all insurance proceeds for the repair or reconditioning of the premises or of allowing said proceeds, up to the amount then owed to mortgagee, to be paid to mortgagee in partial or full satisfaction of the indebtedness.

Third. To keep all buildings, fences, and other improvements on the said land in as good repair as they now are, and not to commit or allow any waste on said Premises.

Fourth: To pay before the same shall become delinquent any and all taxes, charges, or assessments, general, local, or special levied by any competent public authority of the State of Oklahoma, or any subdivision thereof, or of the United States of America, upon said Premises, or any part thereof, or upon the mortgagee's interest therein, or which might become a lien thereon, to whomsoever assessed, including personal taxes.

Fifth: To keep said Premises free from all judgments, mechanic's liens and all other statutory liens of whatsoever nature, to the end that the priority of these presents may at all times be maintained, and to pay the Mortgagee, its successors or assigns, within thirty days, all sums, including costs, expenses and reasonable agents' and attorneys' fees it may expend, or for which it may become obligated in any proceedings, legal or otherwise, to establish and sustain the lien of this mortgage, or its priority; or in defending against liens, claims, rights, estates, easements or restrictions of any person or persons asserting priority thereto; or for an abstract or extension of abstract of title to said premises; together always with interest on all sums at 8.5% per annum, from the date same were paid; and for payment of said sums and interest this mortgage shall stand as security in like manner and effect as for payment of said debt.

Sixth: In the event of failure of said Mortgagor to maintain insurance, to pay taxes and assessments, or to keep said premises free from judgments, mechanic's liens or other statutory liens or claims of whatsoever character, which might be prior to lien of this mortgage, as hereinbefore provided, the Mortgagee, its successors or assigns, may at its option procure such insurance, pay such taxes and assessments, redeem said Premises from any tax sale, pay such mechanic's lien or other statutory liens, or other claims, together with the penalties and interest thereon, and the Mortgagor shall within ten days pay to the Mortgagee, its successors or assigns, all such sums which it may have so paid, or for which it may become obligated, together with interest at 8.5% per

annum, from the date of payment by the Mortgagee, its successors or assigns; and for payment thereof this mortgage shall stand as security in like manner and effect as for the payment of said principal debt, it being expressly agreed that in making such payments, the mortgagee, its successors or assigns, shall be deemed acting as agent of the Mortgagor in every particular, and that payment by said Mortgagee, its successors or assigns, or any such insurance premiums, taxes, or assessments upon said property, or upon this mortgage or the debt hereby secured, judgments, mechanic's liens, or other statutory liens, or other claims as hereinbefore provided, shall not be construed or be held to be a waiver of default in the terms of this mortgage, or prevent the holder hereof from declaring the entire debt secured hereby due and payable and foreclosing this mortgage, whether such payment be made prior or subsequent to the exercise of the option to declare the debt due and foreclose this mortgage as herein provided.

Seventh: It is further expressly agreed that if any default be made in the payment at the time and place and in the manner provided of all or any part of said debt or the interest thereon or of any other sum hereby secured, or if waste shall be suffered or committed on said Premises or if any mechanic's or other liens which might be prior to the lien of this mortgage be created or rest upon said Premises or any part thereof for thirty days without the same being paid and discharge of said Premises therefrom procured; or in case there shall exist upon said Premises any claim, lien encumbrance, easement or restriction prior to this mortgage, or if default be made in the payment of any installment of taxes or assessments upon said Premises or upon the debt hereby secured, or the premiums for said insurance policies when the same become due, or in the event said insurance is not at all times maintained as hereinbefore provided; or upon default in full performance of each and every stipulation and covenant herein contained, the whole principal sum secured by this mortgage, with interest thereon, and all other amounts hereby secured shall at the option of the holder of this mortgage, become immediately due and payable, and this mortgage may be foreclosed accordingly; and no demand for fulfillment of conditions broken, or notice of election to consider the debt due, shall be necessary previous to commencement of suit to collect the debt hereby secured or any part thereof, or to foreclose this mortgage, and no delay or failure on the part of the Mortgagee to exercise any option herein granted at the time of default shall be deemed or held a bar or waiver by the Mortgagee of any right to exercise such option.

Eighth: Anything to the contrary herein or in the note secured hereby, notwithstanding, Mortgagor shall have a period of three months from the commencement of foreclosure proceedings and the mailing by certified mail to Mortgagor of written notice of default during which to reinstate the note securing this mortgage, by paying all delinquent payments, interest thereon at the rate of 10% per annum from the date due to the date paid, and the reasonable expenses and attorney's fees of payee in connection therewith to be secured by this mortgage which shall be due and payable when suit is filed and said Mortgagor hereby waives all rights, under the homestead, exemption and stay laws of the State of Oklahoma; and appraisal of said real estate is hereby expressly waived or not waived at the option of the Mortgagee, its successors or assigns, such option to be exercised prior to or at the time judgment is rendered in any foreclosure hereof.

Ninth: It is further agreed that in event any of the land hereinabove described is sought to be taken by virtue of the law of eminent domain the said Mortgagor, administrators, executors, successors or assigns will promptly notify the Mortgagee or its assigns of the institution of proceedings in eminent domain, and agrees and directs that all condemnation or purchase money which may be agreed upon or which may be found to be due, be paid to said Mortgagee or its assigns and/or Mortgagor as its interest may appear and be credited upon the balance due hereunder

Tenth: As additional and collateral security for the payment of the note and the indebtedness hereinbefore described, said Mortgagor hereby assigns to said Mortgagee, its successors and assigns, all the profits, revenues, royalties, rights and benefits accruing under all oil, gas or mineral leases now on said property, or which may hereafter be placed thereon, and the lessee or assignee or sub-lessee is hereby directed on production of this mortgage or certified copy thereof, to pay said profits, revenues, royalties, rights and benefits to the said Mortgagee, its successors and assigns; this provision to become effective only upon default in the terms and conditions of this mortgage or the note hereby secured, or, prior to such default, upon notice to the lessee in such oil, gas or mineral lease, and to terminate and become null and void upon release of this mortgage.

Eleventh: In construing this mortgage the word "Mortgagor" wherever used shall be held to mean the person or persons named in the preamble as Mortgagor jointly and severally and wherever notes are referred to herein it shall be held to mean singular or plural as the case may be.

The foregoing covenants and conditions being kept and performed, this conveyance shall be void, otherwise to remain in full force and virtue.

Upon satisfaction of this mortgage the Mortgagor agrees to accept from the Mortgagee a duly executed release of same, have it recorded, and pay the cost of recording.

IN WITNESS WHEREOF, the said Mortgagor has executed and delivered these presents at Tulsa, Oklahoma this \_\_\_\_ day of \_\_\_\_\_, 1984.

CHAMPION FINANCIAL CORPORATION,  
a California corporation

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_  
Secretary

STATE OF OKLAHOMA)  
                          ) ss.  
COUNTY OF TULSA )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1984, by \_\_\_\_\_, \_\_\_\_\_ President of CHAMPION FINANCIAL CORPORATION, a California corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC 21 1984 /pm

MADISON J. BOWERS, an  
individual,

Plaintiff,

vs.

CCH COMPUTAX SYSTEMS, INC.,  
a Delaware corporation,

Defendant.

No. 84-C-208-E ✓

Jack E. Silver, U.S. District Court

O R D E R

NOW on this 20<sup>th</sup> day of December, 1984 comes on for hearing the Defendant's motion to dismiss or transfer the above-styled case and the Court, being fully advised in the premises finds as follows:

The Plaintiff, Madison J. Bowers, and the Defendant, CCH Computax Systems, Inc. entered into a written agreement whereby the Plaintiff purchased certain computer equipment from the Defendant. There is a clause in the agreement that stipulates that any action relating to the agreement shall be instituted in San Diego, California.

The equipment did not work to the satisfaction of the Plaintiff. Therefore, the Plaintiff filed a complaint alleging breach of express warranty, breach of implied warranty and fraud. The complaint was filed in the District Court of Oklahoma for Tulsa County. The cause of action was properly removed to the United States District Court for the Northern District of Oklahoma pursuant to Title 28, U.S.C. § 1441. Subsequently, the

Defendant filed a motion to dismiss Plaintiff's complaint or to transfer the action to the United States District Court for the Southern District of California, pursuant to 28 U.S.C. § 1406(a), on the grounds that since the agreement stipulated that any action relating to the agreement shall be instituted in San Diego, California, the action was brought in the wrong district. Alternatively, the Defendant asks to transfer the action for the convenience of the parties and witnesses and in the interest of justice, pursuant to 28 U.S.C. § 1404(a). The Plaintiff opposes dismissal or transfer of the action on the ground that the forum selection clause should not be enforced by the Court.

Upon review of the pleading, the Court finds this action should be removed to the Southern District of California because the agreement which was signed by both the Plaintiff and the Defendant contained a forum selection clause that stipulated that any action relating to the agreement shall be instituted in San Diego, California.

The Supreme Court of the United States has held that contractual choice of forum provisions such as this are prima facie valid and should be enforced unless the resisting party satisfies a heavy burden of demonstrating that the provision is unreasonable under the circumstances. M/S Bremen v. Zapata Offshore Company, 407 U.S. 1, 10, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972).

The Court also stated in Bremen that a freely negotiated forum selection clause is presumed to be enforceable absent fraud



or overreaching. Id., at 12. Further, the party seeking to escape his contract may overcome this presumption only by showing that "trial in the contractual forum will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court. Id., at 18.

The forum selection clause in the instant controversy is not unreasonable under the circumstances nor was the clause procured by fraud or overreaching. Finally, the Plaintiff has failed to show that he will be deprived of his day in court if the trial is held in San Diego, California.

The Plaintiff has come forward with five arguments to support his position that the forum selection clause should not be enforced.

Plaintiff first alleges the clause was not the subject of any negotiations whatsoever and therefore it should not be enforced.

Plaintiff claims that the court in City of New York v. Pullman Incorporated, 477 F.Supp. 438 (S.D. N.Y. 1979) refused to enforce a forum selection clause which was not the subject of arms-length bargaining between the parties and which was included in a form contract drafted entirely by one side. While it is true that the forum selection clause in Pullman was not the subject of negotiations and it was part of a contract drafted entirely by one side, the court based its decision not to enforce the clause not on these factors alone but also on the fact that the clause was ambiguous in that it stated that all claims should be brought in New York courts and it was unclear as to whether

this meant only New York state courts or whether it also included federal courts sitting in New York. The court held that under normal rules of construction the ambiguity should be resolved against the drafter of the contract. Id., at 443. In the instant case however, no such ambiguity exists thus no resolution is necessary.

Plaintiff next contends the clause was not bargained for by the parties, therefore it should not be enforced, relying on Cutter v. Scott & Feltzer Co., 510 F.Supp. 905 (E.D. Wis. 1981). In that case the court refused to enforce a forum selection clause that stipulated Ohio as the forum and allowed the suit to be brought instead, in Wisconsin. The court found that the forum selection clause was part of a six page single-spaced boiler plate document; that the clause was not a vital part of the agreement; and that the parties had not engaged in any bargaining over the clause. The court however, did not base its decision not to enforce the clause on these factors alone, but stated:

Whether this factor alone would be enough for the plaintiff to carry his burden I do not consider, for the plaintiff has made a second argument which I find cogent when considered in conjunction with the above discussion. The plaintiff contends that public policy favors retention of this suit in this district. The plaintiff bases this argument on the nature of this action.

The "nature of this action" alluded to in the above quoted passage involved an alleged violation of an intricate Wisconsin statute which was enacted to protect the interests of persons such as the plaintiff in that case. The court felt that the

experience of a Wisconsin judge with the particular statute would be greater than that of any judge in Ohio. The court concluded from a totality of the circumstances of that case that public policy dictated that the plaintiff had the right to maintain the suit in Wisconsin rather than in Ohio. Id., at 908.

The factors so heavily relied upon by the court in the Cutter case simply do not exist in the case at bar. The instant case can be distinguished as follows:

- (1) The agreement in controversy in the instant case consists of only two pages;
- (2) The purpose of the forum selection clause in the instant case is to relieve the defendant of the burden of being subjected to litigation related to its agreement in all fifty states. The Defendant claims that if it is able to litigate all actions in its home state it will be able to pass on substantial savings to all of its customers, including the Plaintiff. The Defendant claims the clause is an integral part of the bargain struck by the two parties and as such, it should be enforced by the court;
- (3) No intricate Oklahoma statute is involved nor has there been any factual allegation that any public policy of Oklahoma would be violated if the trial is held in California.

Plaintiff next asserts the forum selection clause should not be enforced because it was procured by fraud.

While there are allegations that the Defendant fraudulently

misrepresented the capabilities of the equipment, there is no evidence before the Court to support the allegation that the forum selection clause itself was procured by fraud. The Plaintiff alleges that a representative of the Defendant induced him to sign the agreement by stating that the agreement was "basically the same" as agreements the Plaintiff had entered into previously with the Defendant's predecessor. There is no evidence to indicate that the Defendant's representative said that the agreement was "identical" to agreements the Plaintiff had signed previously. The Plaintiff did however, subsequently sign additional agreements containing the forum selection clause and there is no evidence to indicate that any misrepresentation was made to the Plaintiff regarding these agreements.

Plaintiff next states the claims of the Plaintiff in this case are not "related to" the agreement thus the forum selection should not be enforced.

The Court addressed this very issue under virtually the same circumstances in Hoffman v. Burroughs Corp., 571 F.Supp. 545 (N.D. Tex. 1982). The agreement in the Hoffman case is identical to one in dispute in the instant controversy. In that case the court stated:

First, it is clear that the present action is "related to" the agreements between Computax and HPMS within the language used in the forum clause. Despite the Plaintiff's contention to the contrary, claims for fraudulent inducement into contract and breach of warranties impliedly made upon entering an agreement are undoubtedly related to that agreement.

Id., at 547.

The Plaintiff is making virtually the same claims in the

instant case thus it can be readily concluded that these claims also "relate to" the agreement.

Finally Plaintiff contends that the burden of inconvenience that would fall heavily upon Plaintiff if the trial is held in San Diego, California, is such that he may be deprived of his day in Court. The Court finds this the most compelling of Plaintiff's arguments. In support of this contention Plaintiff submits:

- (1) Many of the Plaintiff's witnesses are located in Tulsa and these witnesses would not be subject to compulsory process if the case was transferred to California;
- (2) Other witnesses are located in Dallas, Texas and Tulsa is closer than San Diego;
- (3) The computer, which is the subject of the lawsuit, is located in Tulsa;
- (4) The documents relating to the computer are located in Tulsa;
- (5) Since the Plaintiff, his wife, and his key employee would have to travel to San Diego for several days or possibly weeks if the trial is held there, the Plaintiff would have to close his place of business and he would lose substantial income;
- (6) The Plaintiff would have the expense of having to provide for his two children, ages 7 and 15;
- (7) The Plaintiff cares for and supports his mother and his wife's mother. Both of these women are in St. John's Hospital in Tulsa with terminal illnesses. The

Plaintiff claims that this situation would impact his decision to carry on with this litigation if it is transferred to San Diego.

There is no question but that San Diego would be an inconvenient forum for the Plaintiff. Mere inconvenience however, is not sufficient. The Plaintiff has the burden of showing that trial in the contractual forum would be so gravely difficult and inconvenient that he would for all practical purposes lose his day in court. It does not appear that the Plaintiff has satisfied this burden.

The Court notes that the Defendant's witnesses are located in San Diego as are its documents concerning the computer. Tulsa is undoubtedly an inconvenient forum for the Defendant.

No ruling of this Court will totally satisfy either party. If the trial is held in California the Plaintiff will be inconvenienced. If the trial is held in Oklahoma the Defendant will be inconvenienced. In D'Antvono v. C C Computax Systems, Inc., 570 F.Supp 708 (D. Rhode Island 1983), the Rhode Island Court was faced with the same dilemma in a case that involved the same Defendant and the same agreement as the one at bar. In that case the plaintiff wanted the trial to be held in Rhode Island rather than California. The court stated:

There is no perfect solution to such an impasse (short, perhaps, of trying this case in Kansas). It is simply a question of whose ox is to be gored; and it is precisely in this sort of situation that a forum selection clause can and should tip the scales.

Id at 714.

In Kolendo v. Jenrel Inc., 489 F.Supp. 983, 985 (S.D. W.Va.

1980) the court stated:

This Court must concur in this statement. The totality of the circumstances, measured in the interests of justice, will and should, ultimately control. In the end, the party seeking to avoid the strictness of the forum selection clause must convince the court of the reality of a set of qualitative factual circumstances warranting denial of enforcement.

The Court concludes the Plaintiff in the instant case has not satisfied his burden that circumstances warrant the denial of the enforcement of the forum selection clause. The clause should therefore be enforced. The proper forum for the instant controversy is San Diego, California.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this case be and is hereby removed to the Federal District Court for the Southern District of California.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC 20 1984  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

HARRY E. McPHAIL, JR.,

Appellant,

vs.

Case No. 84-C-229 C

ROBERT H. FRANDEN, TRUSTEE  
ANCOR EXPLORATION CO.,

Appellee.

NOTICE OF DISMISSAL

COMES NOW the Appellant in the above styled matter,  
Harry E. McPhail, and does hereby give Notice of the Dismissal  
of his Appeal.

Respectfully submitted,

By

Patrick J. Malloy III

CERTIFICATE OF MAILING

I, Patrick J. Malloy III, hereby certify that on the  
12th day of December, 1984, a true and correct copy of  
the above and foregoing Notice of Dismissal was mailed to:  
Mr. Joseph R. Farris, 816 Enterprise Building, Tulsa,  
Oklahoma 74103, with proper postage thereon fully prepaid.

Patrick J. Malloy III



*Entered*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

BRENDA K. KELLY,  
Plaintiff,

vs.

INDEPENDENT SCHOOL DISTRICT  
NUMBER I-20 OF CRAIG COUNTY,  
OKLAHOMA, et al.,  
Defendants.

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No. 83-C-708-E

DEC 20 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 19<sup>th</sup> day of December, 1984.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

*7/2*

*Entered*

**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**DEC 20 1984**

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

MID-STATES AIRCRAFT ENGINES, )  
INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JOSEPH C. RANDOLPH, et al., )  
 )  
Defendants. )

No. 84-C-438-E

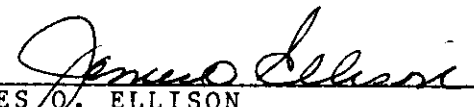
**JUDGMENT DISMISSING ACTION**  
**BY REASON OF SETTLEMENT**

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 19<sup>th</sup> day of December, 1984.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

*14*

*Entered*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 20 1983

NATIONAL PROPANE CORPORATION,  
(Great Plains Gas Division),

Plaintiff,

vs.

DALCO PETROLEUM CORPORATION,  
an Oklahoma Corporation,

Defendant.

Case No. 83-C-649-E

*Notice of*  
DISMISSAL WITH PREJUDICE

JOHN D. SILVER, CLERK  
U.S. DISTRICT COURT

COMES NOW National Propane Corporation, Plaintiff and does  
hereby dismiss the above captioned matter with prejudice.

National Propane Corporation  
(Great Plains Gas Division)

by:

*Charles A. Harshaw*  
Charles Harshaw  
Vice President

*Joseph E. Day*  
Joseph E. Day, of  
HINES, PENCE, DAY & POWERS  
815 Merchants National Bank  
Cedar Rapids, IA 52401  
(319) 365-0437

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this instrument was served by mail upon other counsel of record as provided by F.R.C.P. 5 on the 14 day of December, 1984.

Joseph E. Day

FILED

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

DEC 20 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

GRAND RIVER DAM AUTHORITY, a  
Public Corporation,

Plaintiff,

vs.

Case No. 84-C-585-E

UNITED STATES OF AMERICA, Trustee  
and Owner of the legal title to  
certain land in Delaware County,  
Oklahoma, for the use and benefit  
of certain restricted Indians, and

MICHAEL LEON ISRAEL, TAMMY LYNN  
ISRAEL, ROY WAYNE SINOR and  
BRENDA M. SINOR, husband and wife,  
and Delaware County Treasurer,

Defendants.

FINAL JUDGMENT

NOW on this 19th day of December, 1984, this matter comes on for disposition on oral application of the plaintiff for an order confirming the commissioners' report, the Court finds that the appointment, oath and report of the said commissioners are in proper form, that plaintiff has paid into the Court Clerk for the use and benefit of the defendants the sum required by the report of said commissioners, together with the proper fees for the said commissioners and costs of this action; that the property described in plaintiff's petition is necessary for the purposes therein set out, that the plaintiff, Grand River Dam Authority, is vested with the power of eminent domain, has lawfully exercised said power and is entitled to take and acquire a perpetual easement for the construction, reconstruction, removal replacement, maintenance and operation of a line, or lines, of poles, towers, structures, wires and fixtures for the transmission of energy over and across the defendants' property, that defendants have not filed objections to the Report of Commissioners and the rights, title and interest being condemned by the plaintiff should be vested in the plaintiff in accordance

with law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THIS COURT that plaintiff has lawfully exercised its power of eminent domain by filing in this Court a complaint seeking the condemnation of certain herein described rights, title and interest in the defendants' property, that the appointment, oath and report of commissioners heretofore filed in the cause are in proper form, that plaintiff has paid into the registry of the Court Clerk for the use and benefit of the defendants the sum required by the report of commissioners and that the sum of \$6000.00, as found by the Commissioners, is adopted by the Court as the award of just compensation and damages for the rights, title and interests condemned by the plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THIS COURT that the Grand River Dam Authority is hereby vested with the perpetual right, privilege and authority to construct, reconstruct, remove, replace and maintain a line, or line, of poles, towers, structures, wires, and fixtures for the transmission of electric energy over and across the following described property:

A strip of land 150 feet in width located in the SW/4 SE/4 NW/4 and in the W/2 SE/4 SW/4 NW/4 of Section 10, Township 20 North, Range 23 East of the Indian Base and Meridian in Delaware County, Oklahoma, said strip being 75 feet either side of a centerline more particularly described as follows, to-wit:

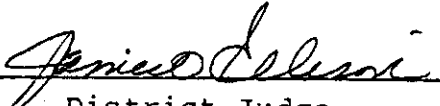
Beginning at a point on the west line of said SW/4 SE/4 NW/4 of Section 10, said point being 384.6 feet northerly from the southwest corner thereof; thence easterly a distance of 990.1 feet more or less to a point on the east line of said W/2 SE/4 SE/4 NW/4 of Section 10, said point being 352.5 feet northerly from the southeast corner thereof.

It is FURTHER ORDERED, ADJUDGED, AND DECREED that the

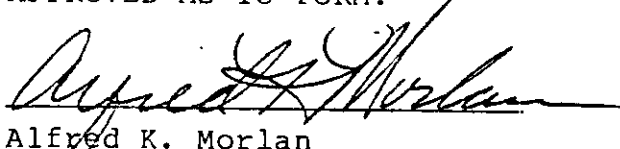
Stipulation of the Defendants, filed herein on November 20, 1984, is approved and adopted by this Court. Therefore, the Clerk of this Court should disburse the funds on deposit for this case as follows:

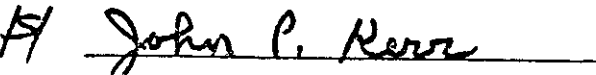
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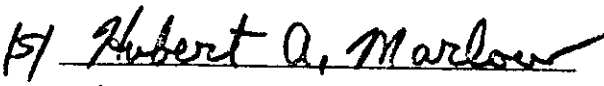
1. Roy Wayne Sinor and Brenda M. Sinor, jointly.....\$2000.00
2. Area Director, Muskogee Area Office, B.I.A., for the I.I.M. amount of Tammy Lynn Israel.....\$2000.00
3. Area Director, Muskogee Area Office, B.I.A., for the I.I.M. amount of Michael Leon Israel.....\$2000.00

  
District Judge

APPROVED AS TO FORM:

  
Alfred K. Morlan  
Attorney for Plaintiff

  
John P. Kerr  
Attorney for Defendant, Roy Wayne Sinor and  
Brenda M. Sinor

  
Hubert A. Marlow, Asst. U.S. Attorney  
For: Defendants United States of America,  
Michael Leon Israel and Tammy Lynn Israel

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KEN WEBEL,

Plaintiff,

vs.

AMERICA'S CUP, INC.,

Defendant,

vs.

WOOD MANUFACTURING COMPANY, INC.,  
an Arkansas corporation,

Third-Party Defendant.

No. 83-C-998-C

ORDER OF DISMISSAL WITH PREJUDICE

The above matter comes on to be heard this 20 day of December, 1984, upon the written Stipulation of the parties for a dismissal of all pending claims between the plaintiff, the defendant and the third-party defendant, with prejudice. The Court, having examined said Stipulation, finds the parties have entered into a compromise settlement covering all remaining claims involved in the action and have requested the Court to dismiss said actions with prejudice. The Court, being fully advised in the premises, finds that all remaining claims in the above-styled and numbered cause of action should be dismissed pursuant to said Stipulation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff's Cause of Action against defendant, America's Cup, Inc., be and the same is hereby dismissed with prejudice to any further action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the third-party action of America's Cup, Inc. against third-party defendant, Wood Manufacturing Company, Inc., be and the same is hereby dismissed with prejudice to any further action.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE



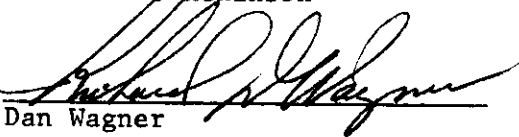
APPROVED AS TO FORM:



John Tucker



Michael P. Atkinson



Dan Wagner

1. That at the direction of the Defendant, Plaintiff on April 4, 1983 sold short 5,000 shares of MSI Data Corporation to the account of Defendant. Pursuant to such short sale, 5,000 shares of MSI Data Corporation, Defendant agreed to purchase 5,000

shares of MSI Data Corporation or otherwise reimburse Plaintiff for Plaintiff's short sale of 5,000 shares of MSI Data Corporation on behalf of Defendant on or before April 11, 1983.

2. That at the direction of Defendant, Plaintiff on April 5, 1983, sold short 1,700 shares of MSI Data Corporation to the account of Defendant. Pursuant to short sale of 1,700 shares of MSI Data Corporation, Defendant agreed to purchase 1,700 shares of MSI Data Corporation or otherwise reimburse Plaintiff for Plaintiff's short sale of 1,700 shares of MSI Data Corporation on behalf of Defendant on or before April 12, 1983.

3. At the direction of Defendant, Plaintiff on April 6, 1983, sold short 3,300 shares of MSI Data Corporation for the account of Defendant. Pursuant to such short sale of 3,300 shares of MSI Data Corporation, Defendant agreed to purchase 3,300 shares of MSI Data Corporation or otherwise reimburse Plaintiff for Plaintiff's short sale of 3,300 shares of MSI Data Corporation on behalf of Defendant on or before April 13, 1983.

4. Plaintiff made demand on Defendant that Defendant purchase 10,000 shares of MSI Data Corporation or otherwise reimburse Plaintiff for Plaintiff's short sales totaling 10,000 shares of MSI Data Corporation for Defendant's account and pursuant to Defendant's directions. Despite such demands, Defendant refused to make payment or otherwise purchase any shares of MSI Data Corporation which Plaintiff had sold short for Defendant's account and pursuant to Defendant's instructions.

5. As a result of Defendant's failure and refusal to purchase MSI Data Corporation shares or otherwise satisfy the

short position of the Defendant's account, Plaintiff, pursuant to the aforesaid agreement, on April 12, 1983, April 13, 1983, and April 14, 1983 liquidated the account of Defendant by purchasing 10,000 shares of MSI Data Corporation. Plaintiff's purchase of 10,000 shares of MSI Data Corporation to cover the short position of Defendant's account resulted in a net loss to the Plaintiff of \$11,500.00.

6. Plaintiff has demanded payment of such indebtedness on Defendant's account from Defendant; however, Defendant has failed and refused to and still fails and refuses to pay any amounts owing from said demand. As a result of Plaintiff's purchase of 10,000 shares of MSI Data Corporation to cover the short position of Defendant's account, Defendant is indebted to Plaintiff in the amount of \$11,500. No payments have been made to reduce this indebtedness.

7. That Defendant is justly indebted to Plaintiff in the approximate amount of \$11,500 as of April 14, 1983. Further, that Plaintiff is entitled to interest on said sum at the rate of 6.0% per annum from April 14, 1983.

8. Plaintiff has demanded payment of said account in full, but Defendant has wholly failed and refused to pay the balance due on said account. Despite Defendant's promise to pay said account, no payments have been made, and the balance owing on said account of \$11,500 as of April 14, 1983, together with interest owing at the rate of 6.0% per annum.

The Court finds that the Court has jurisdiction over the parties and the subject matter thereof by virtue of 28 U.S.C.

§ 1332, based upon the diversity of citizenship of the parties. The amount in controversy exceeds \$10,000, exclusive of interest, costs and attorneys' fees.

The Court further finds under the laws of the State of Oklahoma, the Plaintiff is entitled to interest on his judgment at the rate of 6.0% per annum and is entitled to reasonable attorneys' fees and costs to be determined by the Court upon subsequent application of Plaintiff.

The Court being fully advised further finds that said attorneys duly authorized, that the Warrant of Attorney and Affidavit of Defendant filed herein are in all respects regular and sufficient, and that judgment should be entered for the Plaintiff upon such confession.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff have and recover from the Defendant the sum of \$11,500, plus interest thereon at the rate of 6.0% per annum from April 14, 1983, to the date of Judgment, and at a rate of 7.50% per annum from the date of Judgment until such sum is forth paid.

s/H. DALE COOK  
\_\_\_\_\_  
UNITED STATES DISTRICT COURT  
JUDGE

Entered

FILED

DEC 20 1984

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SHELTER AMERICA CORPORATION,     )  
  )  
                                  Plaintiff,   )  
  )  
vs.                                        )     Case No. 84-C-895B  
  )  
OCIE C. TAYLOR AND GWENDOLYN A.)  
TAYLOR,                                    )  
  )  
                                  Defendants.   )

JUDGMENT OF DEFAULT

This cause coming for hearing before the undersigned Judge upon Plaintiff's Motion for Default Judgment against Defendants, Ocie C. Taylor and Gwendolyn A. Taylor, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, and it appearing to the Court that the Complaint in the above cause was filed on the 7th day November, 1984, and that Summons and Complaint were duly served on Defendants on November 8, 1984, and that no answer or other defense has been filed by said Defendants, and that default was entered by the Clerk on the 14 day of December, 1984, and that no proceeding has been taken by said Defendants, Ocie C. Taylor and Gwendolyn A. Taylor, since default was entered by the Clerk.

The Court having examined the file, reviewed the Motion, Affidavit, and Brief filed by Plaintiff, and having considered the Affidavit of Plaintiff's counsel as to the attorney fees incurred by Plaintiff in this matter, and being fully advised finds, and

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This Court has jurisdiction over the parties and the subject matter of this action pursuant to 28 U.S.C. §1332.

2. That default judgment is hereby entered against Defendants, Ocie C. Taylor and Gwendolyn A. Taylor, and in favor of Plaintiff for possession of the following described personal property, to-wit: One (1) Dolphin Mobile Home, Serial No. TWIALAS17456.


3. In the event possession cannot be had within thirty (30) days of this date, the Court retains jurisdiction to reopen the case and consider alternative relief.

4. In the event possession is obtained within <sup>thirty</sup> ~~thirty~~ (30) days of this date, this Court reserves, until after sale proceedings, the right of Plaintiff to be awarded a deficiency judgment with interest thereon as provided by the Contract and by 12A O.S. §9-504. *IRB*

5. Plaintiff have further judgment against Defendants for a reasonable attorney fee in the amount of Four Hundred Thirty-Five Dollars (\$435.00).

6. The Court further directs that Plaintiff is entitled to collection expenses and costs of this action.

MADE AND ENTERED this 19<sup>th</sup> day of December, 1984.

  
Thomas R. Brett  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WALTER THOMAS NAPIER,  
Petitioner,

vs.

STUART E. EARNEST, United  
States Marshall, and the  
UNITED STATES PAROLE COMMISSION,

Respondents.

No. 84-C-619-B

ORDER DISMISSING PETITION  
FOR WRIT OF HABEAS CORPUS

Before the Court for consideration is the petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2241 of petitioner Walter Thomas Napier. Petitioner is presently serving two concurrent ten year sentences for state convictions of possession of a stolen vehicle and burglary committed while petitioner was serving a federal parole term. Petitioner seeks release from confinement of the Oklahoma Department of Corrections for violations of his due process rights to a prompt federal parole revocation hearing.

The Tenth Circuit Court of Appeals has concluded that the right to a parole revocation hearing does not accrue until the parolee is taken into federal custody upon execution of the warrant. Small v. Britton, 500 F.2d 299 (10th Cir. 1974); Coronado v. United States Board of Parole, 551 F.2d 275 (10th Cir. 1977); McNeal v. United States, 553 F.2d 66 (10th Cir. 1977). The United States Supreme Court effectively approved the Tenth Circuit's conclusion in Moody v. Daggett, 429 U.S. 78 (1976). The petitioner's present confinement and consequent



loss of liberty do not derive from the parole violator warrant but from his convictions for the crimes committed while on parole.

In the instant case, the federal detainer is on file but no warrant has yet been executed. However, the parole board need not execute a warrant pending petitioner's service of an intervening sentence. Coronado, 551 F.2d at 277. Conviction of the subsequent state offense gives the parole authority "probable cause" to believe that the parolee has committed acts constituting a violation of parole conditions. McNeal, 553 F.2d at 68. Petitioner is not entitled to a hearing until execution of the violator warrant and federal custody thereunder. No due process right to a revocation hearing attaches while the parolee is imprisoned on an intervening state conviction.

Because it plainly appears from the face of the petition that petitioner is not entitled to relief, the petition for Writ of Habeas Corpus is hereby denied.

IT IS SO ORDERED this 19<sup>th</sup> day of December, 1984.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

1080334

NED E. HILL and ERNEST G.  
SKOGG, d/b/a QUALITY CAR  
COMPANY,

Plaintiffs,

v.

HYDRO-CONDUIT CORPORATION,  
a corporation; and RANDALL L.  
GOLDEN,

Defendants.

No. 84-C-570-B

J U D G M E N T

In keeping with the verdict of the jury returned herein on the 19th day of December, 1984 in the companion case of Ernest G. Skogg, No. 84-C-570-B, and under the applicable rule of estoppel by judgment, Judgment is hereby entered in favor of the defendants, Hydro-Conduit Corporation, a corporation, and Randall L. Golden, and against the plaintiff, Ernest G. Skogg, d/b/a Quality Car Company, with costs assessed against said plaintiff. The action of the plaintiff, Ernest G. Skogg, d/b/a Quality Car Company, against said defendants, Hydro-Conduit Corporation and Randall L. Golden, is hereby dismissed.

ENTERED this 20<sup>th</sup> day of December, 1984.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

*Entered*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NATIONAL PROPANE CORPORATION  
(Great Plains Gas Division),

Plaintiff,

vs.

STORAGE MANAGEMENT &  
CONSULTANTS, INC.,

Defendant.

Case No. 83-C-995-E COURT

*Notice of*  
DISMISSAL WITH PREJUDICE

COMES NOW National Propane Corporation, Plaintiff and does  
hereby dismiss the above captioned matter with prejudice.

National Propane Corporation  
(Great Plains Gas Division)

by: *Charles A. Harshaw*  
Charles Harshaw  
Vice President

*Joseph E. Day*  
Joseph E. Day, of  
HINES, PENCE, DAY & POWERS  
815 Merchants National Bank  
Cedar Rapids, IA 52401  
(319) 365-0437

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this instrument was served by mail upon other counsel of record as provided by F.R.C.P. 5 on the 14 day of December, 1984.

Joseph E. Day

100

DEC 20 1964

Figure 1. The effect of the concentration of the *Agrobacterium* suspension on the transformation efficiency of *Agrobacterium* strains.

No. 84-C-570-B

Defendants.

ALL

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THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

Entered  
FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC 20 1984

SIX

THRIFTY RENT-A-CAR SYSTEM, INC. X  
VS. X  
MANUEL DIAZ SALIN, an Individual X  
and OMEGA RENT-A-CAR, INC., a X  
corporation X

NO. 84-C-970 B

ORDER TRANSFERRING CAUSE

A true copy of Debtor's Application for Removal of Pending Case to Bankruptcy Court, filed in Case No. 84-0435, U.S. Bankruptcy Court, Northern District of Oklahoma, having been filed in this case,

IT IS ORDERED, pursuant to Rule 9027, Bankruptcy Rules, that this civil action is hereby transferred to U.S. Bankruptcy Court, Northern District of Oklahoma, to be docketed as an adversary proceeding in case No. 84-0435 in that Court.

SIGNED this 20th day of December, 1984.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 20 1984

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

LARRY LEON CHANEY,

Petitioner,

v.

NO. 83-C-0519-BT

JOHN N. BROWN, Warden, Oklahoma  
State Penitentiary, McAlester,  
Oklahoma,

Respondent.

J U D G M E N T

Pursuant to the Judgment entered by the United States Court of Appeals for the Tenth Circuit December 17, 1984, Judgment is hereby entered that the writ of habeas corpus is denied but that, determining the case as law and justice require, the death sentence of petitioner heretofore imposed is adjudged invalid under the Eighth and Fourteenth Amendments to the United States Constitution, and the execution of the Petitioner under this invalid death sentence is enjoined; and that the judgment is without prejudice to further proceedings by the State for re-determination of the sentence on the conviction, at which proceedings the petitioner is afforded an opportunity to present all evidence relevant to mitigating circumstances or to the aggravating circumstances alleged, including the withheld evidence discussed herein, along with any other evidence relevant to the sentencing proceedings.

ENTERED this 20<sup>th</sup> day of December, 1984.

  
THOMAS R. BRETT

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DEC 20 1984

UNITED STATES OF AMERICA,  
JAMES P. JOHN, Special  
Agent, Internal Revenue  
Service, and SARAH L. BRIGGS,  
Special Agent, Internal  
Revenue Service,

Petitioners,

vs.

AMERICAN AIRLINES, INC.,  
Tulsa, Oklahoma, and  
SYD CHOWINS, Manager,  
Personnel Services,

Respondents.

CIVIL ACTION NO. 84-C-888-E

NOTICE OF DISMISSAL

COMES NOW the United States of America by  
Layn R. Phillips, United States Attorney for the Northern  
District of Oklahoma, Plaintiff herein, through Nancy Nesbitt  
Blevins, Assistant United States Attorney, and hereby gives  
notice of its dismissal, pursuant to Rule 41, Federal Rules of  
Civil Procedure, of this action without prejudice.

Dated this 20th day of December, 1984.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney

*Nancy Nesbitt Blevins*

NANCY NESBITT BLEVINS  
Assistant United States Attorney  
460 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463



CERTIFICATE OF SERVICE

This is to certify that on the 20<sup>th</sup> day of December, 1984, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Syd Chowins, Manager, Personnel Services, American Airlines, Inc., 3800 North Mingo Road, Tulsa, Oklahoma 74151, and American Airlines, Inc., 3800 North Mingo Road, Tulsa, Oklahoma 74151.

Maureen Elizabeth O'Brien  
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KEITH L. LEE,

Defendant.

DEC 19 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

CIVIL ACTION NO. 83-C-783-C

O R D E R

Good cause having been shown, it is hereby ORDERED,  
ADJUDGED AND DECREED that the above-referenced action is hereby  
dismissed without prejudice.

Dated this 19 day of December, 1984.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

*Entel*

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

CHARLES E. CLARK, an individual, )  
and C. CLARK ENTERPRISES, INC., )  
an Oklahoma corporation, )

Plaintiffs, )

vs. )

No. 84-C-605-C

THE CHARTER OAK FIRE INSURANCE )  
COMPANY, a Connecticut )  
corporation, and THE TRAVELERS )  
INSURANCE COMPANIES, a )  
Connecticut corporation, )

Defendants. )

**FILED**

DEC 19 1984

ORDER OF DISMISSAL WITH PREJUDICE

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

Upon application of the plaintiffs and approval of the  
defendants, this cause is hereby dismissed with prejudice, each  
party to bear its own costs.

s/H. DALE COOK

H. DALE COOK, Chief Judge  
United States District Court

APPROVED:

OWENS & MCGILL, INC.

By: 

James Reed, Attorneys for  
Plaintiffs.

RICHARD CARPENTER,  
Attorney for Plaintiffs.

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

SKK INVESTMENT COMPANY

Plaintiff(s),

vs.

BETTY PRICE WHEELER and RICHARD O.  
WHEELER, JR.

Defendant(s).

**FILED**

DEC 19 1984

No. 84-C-85  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 19 day of DECEMBER, 19 84.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
STATE OF OKLAHOMA

FILED

DEC 10 1984

JACK C. SILVER, Clerk  
U. S. DISTRICT COURT

PROFESSIONAL INVESTORS LIFE )  
INSURANCE COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
L. GEORGE REYNOLDS, )  
 )  
Defendant. )

No. 84-C-946-C

JUDGMENT BY DEFAULT

THIS CAUSE came on for hearing at this term on the motion of Kevin W. Boyd, plaintiff in the above titled cause, for judgment, pursuant to Rule 55B (2), Federal Rules of Civil Procedure, and it appearing to the Court that the Complaint in the above cause was filed on the 24 day of October, 1984, and that the Summons and Complaint were duly served on the defendant, L. George Reynolds, on the 5 day of November, 1984, and that the defendant filed his Petition for the removal of this action to this Court on the 27 day of November, 1984, and that no answer or other defense has been filed by the said defendant, and that default was entered on the \_\_\_ day of December, 1984, in the office of the Clerk of this Court, and that no proceedings have been taken by the said defendant since said default was entered.

IT HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiff be awarded judgment against the defendant, L. George Reynolds, the amount of \$16,339.40, with interest thereon at the rate of

15% from the 1st day of October, 1984, until paid, and for the costs of this action.

Dated: December 14, 1984.

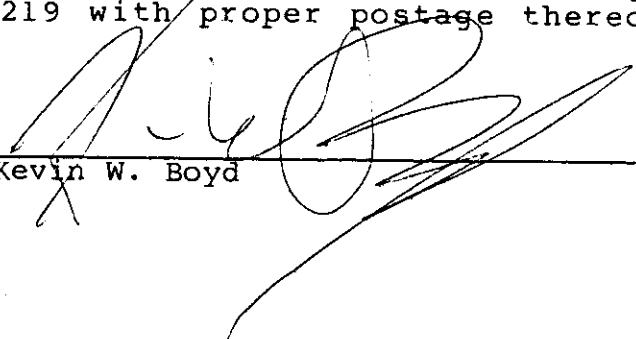
s/H. DALE COOK  

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DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Notice of Motion for Default Judgment was mailed this \_\_\_ day of December, 1984 to S. Steward Frazer, 3333 Lee Parkway, Suite 670, Dallas, Texas 75219 with proper postage thereon prepaid.

  
\_\_\_\_\_  
Kevin W. Boyd

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O R D E R

This matter comes before the Court on defendants' motion for summary judgment filed pursuant to F.R.Civ.P. 56. Plaintiff has objected to the motion. The parties have waived hearing on the motion. For the reasons set forth below, defendants' motion for summary judgment is sustained.

This is an alleged legal malpractice action based upon a real property title opinion issued by defendants in 1972. Plaintiff, title insurer on the property, contends defendants negligently failed to note a defect in the conveyance of the land, which was formerly owned by Nellie Atkins Armstrong. The alleged defect constituting a cloud on the title involved a question of application of federal Indian land laws. Specifically, the land conveyed was restricted and a conveyance was ineffective unless and until approved by the Probate Court. Such approval had never been obtained.



According to the complaint, Nellie Atkins Armstrong filed an action in ejectment in the United States District Court for the Northern District of Oklahoma on February 22, 1974, alleging that a warranty deed she executed on December 3, 1965, was void under federal law. (Nellie Atkins Armstrong v. Maple Leaf Apartments, Ltd., et al., Case No. 74-C-119). The malpractice action was commenced on August 25, 1976.

Defendants contend plaintiff's claim is barred by the two-year statute of limitations for negligence under Oklahoma law. They contend the statute of limitations began to run at the time Mrs. Armstrong filed her suit, and that some two-and-one-half years elapsed before plaintiff filed the malpractice action. Plaintiff concedes a two-year statute of limitations is applicable to its cause of action, but contends the statute did not begin to run until September 1975, when attorney fees were first paid for representation in the lawsuit or that defendants' efforts to cure the title defect tolled the statute of limitations until December 12, 1974.

Under Oklahoma law, claims for negligence are subject to a two-year statute of limitations. 12 Okl.St. Ann. §95. In an action based upon lawyer malpractice, the statute begins to run when the plaintiff learns, or in the exercise of reasonable care and diligence should have learned, of the negligent act. Lewis v. Owen, 395 F.2d 537, 540 (10th Cir. 1968); Seitz v. Jones, 370 P.2d 300, 302 (Okla. 1961). This is true even though the ultimate damage is unknown or unpredictable. Royal Crown

Bottling Company of Oklahoma City, Inc. v. Aetna Casualty & Surety Company, 438 F.Supp. 39, 46 (D.C.Okla. 1977).

In this case, plaintiff was put on notice of defendants' alleged negligence when Nellie Atkins Armstrong filed suit in February 1974. Immediately after the suit was filed, Lawyers Title Insurance Company and its co-defendants began a vigorous defense. According to the complaint, page 5, the co-defendants promptly filed a petition in the probate division of the District Court of Tulsa County requesting approval of the disputed 1965 deed. Nellie Atkins Armstrong filed a motion for preliminary injunction in federal court to enjoin the defendants from proceeding further in state court. The trial court denied the motion and Mrs. Armstrong appealed to the Tenth Circuit Court of Appeals.<sup>1</sup> On December 12, 1974, the Tenth Circuit reversed the trial court and enjoined further proceedings in state court. Armstrong v. Maple Leaf Apartments, Ltd., 508 F.2d 518 (1975). Following this decision, and in response to demand by the insured, Lawyers Title Insurance Company began to pay the insured \$9,700.00 per month until the validity of the title had been settled by the litigation and the amount of the insured's loss could be determined. The first payment was made in October 1975, and the monthly payment was made for a total of 63 months.

Ultimately, after trial of the alleged ejectment case on the merits, the federal district court entered judgment for defendant

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<sup>1</sup> All of this activity apparently occurred within six months following the filing of the federal court ejectment suit in February 1974, more than two years previous to the commencement of the instant cause on August 25, 1976.

on August 2, 1977. The Tenth Circuit Court of Appeals affirmed the decision (Armstrong v. Maple Leaf Apartments, Ltd., 622 F.2d 466 (1979)), the United States Supreme Court denied certiorari, and a mandate of affirmance was issued May 27, 1980. All told, plaintiff herein claims it sustained more than \$425,000 in damages.

Plaintiff contends it incurred no "damage" until it paid its first attorney fees in September 1975. The Court in Royal Crown Bottling Company of Oklahoma City, Inc. v. Aetna Casualty & Surety Company, supra, addressed a similar contention. Therein Aetna claimed it sustained no injury until a jury verdict was rendered in the underlying action. However, the Court stated:

"In this connection the court notes that although Aetna asserts in its brief on this motion that it sustained no injury until the jury rendered their verdict in the Wright case, in its third party complaint Aetna seeks as an item of damages 'trial expenses in the amount of eight thousand (\$8,000.00) Dollars.' Thus Aetna actually seeks to recover in this action for injuries sustained prior to November 14, 1973 (the day the jury returned its verdict) and for such injuries to be recoverable the act of negligence and injury must have occurred prior to that date. The fact that additional injuries may have been sustained on that date or after that date or may be sustained in the future is not material. If there is a coincidence of a negligent act with the fact of some damage, a cause of action comes into being and the statute of limitations begins to run even though the ultimate damage is unknown or unpredictable."

Id. at 46. Plaintiff was put on notice and began to incur trial expenses at the time Nellie Armstrong filed her action February 22, 1974, even though the plaintiff paid no attorney fees until September 1975. Thus, the Court concludes the

two-year statute of limitations began to run at the time plaintiff was notified the Armstrong suit had been filed and began to incur expense, which was no later than March 1974. The two-year statute of limitations ran before plaintiff filed this action on August 26, 1976.<sup>2</sup>

Plaintiff also argues the statute of limitations was tolled during the time when the defendants attempted to remedy the title defects by filing suit in the probate division of the District Court of Tulsa County. Plaintiff contends this activity gave rise to a reasonable expectation by plaintiffs that defendant would fulfill its obligations to warrant title to the property.

When a plaintiff is induced to forego his suit on the strength of representations by the defendant, the defendant may be estopped to avail himself of the statute of limitations. Covey v. C.I.I. Corp., 71 F.R.D. 487 (E.D.Okla. 1975). However, for equitable estoppel to apply to a situation, there must be a false representation or concealment of facts made with actual or constructive knowledge of its falsity, where the receiving party is of necessity without knowledge of the truth or the means of making that determination, and the statement must be made with the intent that it be acted upon, and the receiving party must have acted upon the representation to his detriment. Edwards v. Andrews, Davis, Legg, Bixler, 659 P.2d 857, 860 (Okla. 1982).

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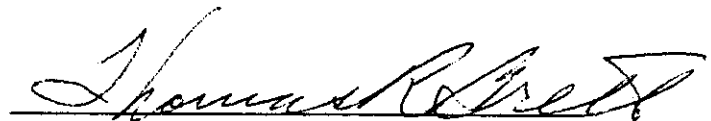
<sup>2</sup> In a letter dated December 12, 1984, plaintiff's counsel called to the Court's attention a recent Tenth Circuit opinion on statutes of limitations for legal malpractice actions. The case, Farner v. Fireman's Fund Insurance Companies, No. 82-1647, filed Nov. 16, 1984, deals with Texas law concerning statutes of limitations and is inapplicable herein.

In the present case, the requisite elements for promissory estoppel are missing. There were no false representations or concealment of facts by defendants in their effort to clear title through probate proceedings. Therefore, the theory of equitable estoppel must fail.

Rule 56 of the Federal Rules of Civil Procedure provides summary judgment is proper when no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. Bruce v. Martin-Marietta, 544 F.2d 442, 445 (10th Cir. 1974) and Ando v. Great Western Sugar Co., 475 F.2d 531, 535 (10th Cir. 1973).

Therefore, defendants' motion for summary judgment is sustained.

ENTERED this 18<sup>th</sup> day of December, 1984.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

WHIRLPOOL ACCEPTANCE CORPORATION, )  
a Delaware corporation, )

Plaintiff, )

vs. )

No. 84-C-944 E

BYNUM HOME FURNISHINGS, INC., )  
an Oklahoma corporation, )  
JOHN R. BYNUM, JOHN W. BYNUM, )  
and DOROTHY BYNUM, )

Defendants. )

NOTICE OF DISMISSAL

The plaintiff, Whirlpool Acceptance Corporation, pursuant to Rule 41(a)(1)(i), Fed. R. Civ. P., hereby dismisses its claims in the captioned matter against the defendants, John W. Bynum and Dorothy Bynum, without prejudice.

Dated this 18<sup>th</sup> day of December, 1984.

ROSENSTEIN, FIST & RINGOLD

By James W. Tilly  
James W. Tilly  
OBA #9019  
525 South Main, Suite 300  
Tulsa, OK 74103  
(918) 585-9211

Attorneys for Plaintiff

CERTIFICATE OF MAILING

I, James W. Tilly, hereby certify that on the 18<sup>th</sup> day of December, 1984, a true and correct copy of the foregoing was mailed to Tim K. Baker, Baker & Willis, 218 South Muskogee, Tahlequah, OK 74464, attorney for defendants, with proper postage thereon prepaid.

By

James W. Tilly  
James W. Tilly

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DOUGLAS L. CHAMBERLAIN, et al. )

Plaintiff(s), )

vs. )

WESTERN OIL RESOURCES, LTD., etal )

Defendant(s). )

No. 84-C-708-C

**FILED**

DEC 13 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 18th day of December, 1984.

  
UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

*Entered*  
DEC 10 1984

DARWIN DALE LANDES, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
FRANK THURMAN, Tulsa County )  
Sheriff, and TULSA COUNTY )  
JAIL, )  
 )  
Defendants. )

No. 83-C-774-B

ORDER

This matter comes before the Court on defendants' motion for summary judgment, filed August 31, 1984. On September 26, 1984, the Court conducted a telephone conference during which plaintiff was directed to respond to the motion for summary judgment on or before October 3, 1984. Plaintiff has never responded to the motion for summary judgment, although on November 19, 1984, he filed a motion to dismiss without prejudice.

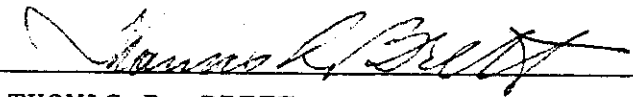
Pursuant to Rule 14(a) of the Rules of the Northern District of Oklahoma, the Court deems the issues urged in the motion for summary judgment confessed by plaintiff. Defendants contended therein there was no material issue of fact, and defendants were entitled to summary judgment on plaintiff's claims. Defendants contend plaintiff has offered no evidence whatsoever to support his allegations that defendants violated his civil rights.

Rule 56 of the Federal Rules of Civil Procedure provides summary judgment is proper when no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. Bruce v. Martin-Marietta, 544 F.2d 442, 445 (10th Cir.

1974); Ando v. Great Western Sugar Co., 475 F.2d 531, 535 (10th Cir. 1973).

Deeming as confessed the contention of defendants that no material issue of fact remains, the Court finds summary judgment is appropriate, and therefore grants defendants' motion for summary judgment. Plaintiff's motion to dismiss is overruled.

ENTERED this 18<sup>th</sup> day of December, 1984.

A handwritten signature in dark ink, appearing to read "Thomas R. Brett", is written over a horizontal line.

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 19 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

INTERNATIONAL UNION, UNITED )  
AUTOMOBILE, AEROSPACE AND )  
AGRICULTURAL IMPLEMENT WORKERS )  
OF AMERICA AND ITS AMALGAMATED )  
LOCAL UNION NO. 1369, )

Plaintiffs, )

vs. )

No. 84-C-574-E ✓

TELEX COMPUTER PRODUCTS, INC., )

Defendant. )

O R D E R

NOW on this 18<sup>th</sup> day of December, 1984 comes on for hearing the above-styled case and the Court, being fully advised in the premises finds as follows:

Plaintiff International Union and the Defendant Telex Computer Products, Inc. entered into a collective bargaining agreement covering the Defendant's employees. The provisions of the agreement pertinent to this controversy are summarized as follows:

Article 2: The Union shall be recognized as the exclusive bargaining agent for all the company's production and maintenance employees, shipping employees, working leaders, plant clerical employees, inspectors and janitors, employed at the company's establishments located in the metropolitan Tulsa, Oklahoma area.

Article 7.1: For the purpose of this agreement, the term "grievance" is limited to a complaint which involves the interpretation, application, or claim of violation of a specific provision of this agreement.

Article 8.1: A grievance which has been processed in accordance with the provisions of the preceding article of this agreement but not satisfactorily settled, shall upon the written request of the Union, be submitted to arbitration by an impartial arbitrator to be selected by the procedure hereinafter set out. The arbitrator shall submit his decision, in writing, within twenty calendar days after the conclusion of the hearing or hearings, as the case may be, and the decision of the arbitrator so rendered shall be final and binding upon the employee or employees involved and upon the parties to this agreement.

The agreement became effective on August 1, 1983. Subsequently, the Defendant opened a new facility at Owasso, Oklahoma but refused to recognize the Plaintiff as the exclusive bargaining agent at the new facility. The Plaintiff, in accordance with the collective bargaining agreement, filed a grievance alleging that the Defendant had violated Article 2 by refusing to recognize the Plaintiff as the exclusive bargaining agent at the Owasso facility. The Plaintiff then informed the Defendant that it wished to appeal the grievance to arbitration. The Defendant has refused to arbitrate. The Plaintiff brought this action seeking an order to compel the Defendant to arbitrate the grievance. Both parties have filed motions for summary judgment, pursuant to Rule 56(B) of the Federal Rules of Civil Procedure and upon review of the same following hearing, the Court finds the Plaintiff's grievance, which alleges that the Defendant has violated Article 2 of the collective bargaining agreement by refusing to recognize the Plaintiff as the exclusive bargaining agent at the Defendant's Owasso facility should be submitted to arbitration.

The Supreme Court of the United States, in a series of landmark cases, has outlined the congressional and judicial policy in the area of labor law in general and in particular in regard to the collective bargaining agreement and arbitration. In Textile Workers Union v. Lincoln Mills of Alabama, 77 S.Ct. 912, 916 (1957), the Court stated that the present policy in the area of labor law is to promote industrial stabilization through the collective bargaining agreement. In United Steelworkers of America v. Warrior and Gulf Navigation Company, 80 S.Ct. 1347, 1350 (1960), the Court stated that a major factor in achieving industrial peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement. In the latter case there was also a discussion of the Court's role in a situation where one party to a collective bargaining agreement refused to arbitrate:

The Congress, however, has by § 301 of the Labor Management Relations Act, assigned the courts the duty of determining whether the reluctant party has breached his promise to arbitrate. For arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit. Yet, to be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration, the judicial inquiry under § 301 must be strictly confined to the question whether the reluctant party did agree to arbitrate the grievance or did agree to give the arbitrator power to make the award he made.

Id. at 1353.

The Court then announced the test to be applied when there was a dispute as to whether a particular provision of a collective bargaining agreement should be submitted to

arbitration.

An order to arbitrate should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.

Id. at 1353.

To reiterate certain facts of the instant case, Article 71 of the collective bargaining agreement states that a grievance is a complaint which involves the interpretation of a specific provision of the agreement [emphasis added]; Article 8.1 states that an unsettled grievance shall be submitted to an arbitrator for a final decision; and Article 2 states that the Union shall be the exclusive bargaining agent for certain employees employed at the company's establishments located in the metropolitan Tulsa, Oklahoma area [emphasis added]. The grievance filed in this case alleges that the Defendant has refused to recognize the Plaintiff as the exclusive bargaining agent at the Defendant's Owasso facility. Since this grievance is unsettled and since resolution of the grievance will involve an interpretation of the phrase "metropolitan Tulsa, Oklahoma area", it should, according to the terms of the collective bargaining agreement, properly be submitted to arbitration.

It must be noted that even if the phrase "metropolitan Tulsa, Oklahoma area" could not reasonably be construed as to include Owasso, the matter should nevertheless be submitted to arbitration. The Supreme Court has stated:


The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the

arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for.

United Steelworkers of America v. American Mfg. Co., 80 S.Ct. 1343, 1346 (1960).

The Defendant contends that the collective bargaining agreement can apply to the employees at the Owasso plant only under the guise of accretion, which is an addition of new employees to an already existing group of represented employees. This argument however, misses the mark. The issue in this case is not whether an accretion has occurred. The issue is whether the parties to the collective bargaining agreement in controversy agreed to arbitrate the grievance which the plaintiff has filed. To reiterate, since the grievance involves the interpretation of a provision of the agreement, the parties have agreed to arbitrate.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's motion for summary judgment be and is hereby granted; Defendant's motion for summary judgment be and is hereby overruled. Accordingly the parties are ordered to arbitrate this dispute pursuant to the collective bargaining agreement.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT WITHIN AND FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
DEC 17 1984

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

PATRICIA D. STARNES,  
Plaintiff,

vs.

CASE NO.: 84-C-615-E

MARION F. STONE, individually,  
and as agent for WALES TRANS-  
PORTATION and WALES TRANS-  
PORTATION, individually,  
Defendants.

ORDER OF DISMISSAL

ON This 14th day of December, 1984, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

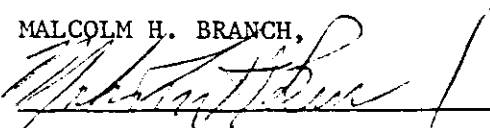
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

**S/ JAMES O. ELISON**

JUDGE, DISTRICT COURT OF THE UNITED  
STATES, NORTHERN DISTRICT OF OKLAHOMA

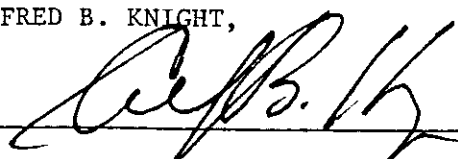
APPROVAL:

MALCOLM H. BRANCH,

  
Attorney for the Plaintiff,



ALFRED B. KNIGHT,



---

Attorney for the Defendants.

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC 17 1984

B.A.S.S., INC.

Plaintiff,

v.

NATIONAL REPORTER  
PUBLICATIONS, INC.

Defendant.

Civil Action No. 84-C-171E

WRIT OF PERPETUAL INJUNCTION AND ORDER

NATIONAL REPORTER PUBLICATIONS, INC., its officers, agents, employees, subsidiaries, licensees, successors and assigns, and all other persons in active concert or privity or in participation with them, who receive actual notice of this injunction by personal service or otherwise, are perpetually restrained and enjoined from:

a) Directly or indirectly using the trademark PRO BASS, either alone or in combination with any other word, term or design or directly or indirectly using any other mark or designation confusingly similar to Plaintiff's trademark BASS MASTER in connection with the sale and/or offering for sale of any goods or services with which such use would be likely to cause confusion, or to cause mistake or to deceive; and,

b) This Perpetual Injunction is not intended to, and shall not apply to, the use by NATIONAL REPORTER PUBLICATIONS, INC., its officers, agents, employees, subsidiaries, licensees, successors and assigns, of those trademarks or titles set forth on Exhibit "A", attached hereto

and incorporated herein by reference, so long as said trademarks or titles do not, in any manner, emphasize, accentuate or otherwise give predominance to the letters or word "BASS" over the remaining letters or words forming the trademark or title chosen.

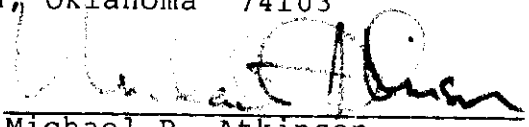
NATIONAL REPORTER PUBLICATIONS, INC., its officers, agents, employees, subsidiaries, licensees, successors and assigns and all persons in active concert or privity or in participation with them shall not be enjoined from using the trademark PRO BASS on the masthead of its magazine from the date of this Decree until June 1, 1985.

Entered this 17<sup>th</sup> day of December, 1984.

  
James O. Ellison  
United States District Judge

APPROVED AS TO FORM:

Best, Sharp, Thomas, Glass & Atkinson  
300 Oil Capital Building  
507 South Main Street  
Tulsa, Oklahoma 74103

By:   
Michael P. Atkinson  
Counsel for Plaintiff

Pray, Walker, Jackman, Williamson & Marlar  
2200 Fourth National Building  
Tulsa, Oklahoma 74119

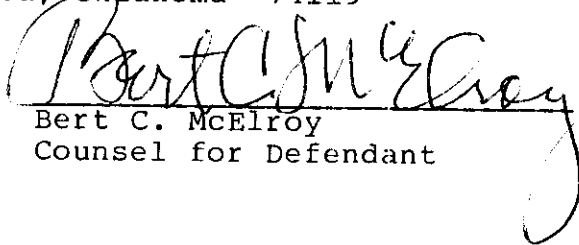
By:   
Bert C. McElroy  
Counsel for Defendant

EXHIBIT A

(Authorized Alternative Titles)

1. BASS ILLUSTRATED
2. AMERICAN BASS
3. POPULAR BASS
4. ACTION BASS
5. MODERN BASS
6. NEW BASS
7. SPORT BASS
8. BASS ADVENTURE
9. BASS FRONTIER
10. BASS HUNTER
11. BASSING or BASSIN'

DEC 17 1984

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

No. 83-C-738-E

S/ JAMES O. ELLISON

JAMES O. ELLISON,  
UNITED STATES DISTRICT JUDGE

4810-007  
HHP/clr  
COLL26

**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**DEC 17 1984**

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

MID-STATES AIRCRAFT ENGINES, INC., )

Plaintiff, )

vs. )

No. 84-C-438E

JOSEPH C. RANDOLPH, JACK RHOADES, )

JOE DUNCAN, JACK RHOADES AIRCRAFT )

SALES, INC., A Corporation, and )

JACK RHOADES AVIATION, INC., A )

Corporation, )

Defendants. )

ORDER

The Joint Stipulation for Dismissal having been filed on this 17th day of December, 1984, for good cause shown, it is hereby ordered that the Plaintiff's second and fifth causes of action against the Defendant, JOE DUNCAN, are hereby dismissed, said Dismissal to be with prejudice to the Plaintiff's future filing of any lawsuits, stemming from the facts recited in Plaintiff's Complaint in the case herein, against the Defendant DUNCAN.

**S/ JAMES O. ELLISON**

\_\_\_\_\_  
JUDGE

**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**DEC 17 1984**

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

STEVEN A. VERBOS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 83-C-865-E
	)	
JOHN DEERE COMPANY, a	)	
Delaware corporation,	)	
	)	
Defendant,	)	
	)	
vs.	)	
	)	
HOME INDEMNITY COMPANY,	)	
	)	
Intervenor.	)	

ORDER

This matter comes on for hearing on the issue of appropriate sanctions against Plaintiff and Plaintiff's counsel on the 5th day of December, 1984.

Defendant John Deere Company, having presented its evidence as to additional time expended in the preparation of a Motion To Compel and Motion For Sanctions necessitated by Plaintiff's failure to participate in discovery, appears by its counsel, Philard L. Rounds.


Further, Plaintiff's counsel did not object to the hourly rate or the time and expense necessary in pursuing discovery.

No responses to either the Motion To Compel or Motion For Sanctions having been received by the Court, and after counsel for the Plaintiff made his record, it is hereby ordered that sanctions be imposed in the amount of \$350.00 as a fee and \$18.00 in costs. It is further ordered that one-half of the fees and


costs be paid by Steven Verbos and one-half be paid by Earl Wolfe, counsel for Mr. Verbos.

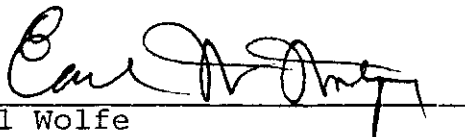
IT IS FURTHER ORDERED that this action is hereby dismissed without prejudice, pursuant to Rule 37(b)(2)(c).

IT IS SO ORDERED THIS 17<sup>th</sup> day of December, 1984.

  
\_\_\_\_\_  
Judge James O. Ellison  
District Court Judge

Approved as to form:

  
\_\_\_\_\_  
Philard L. Rounds  
Counsel for John Deere Co.

  
\_\_\_\_\_  
Earl Wolfe  
Counsel for Steven A. Verbos



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN JARBOE, Trustee for )  
LOUIS PORTER, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DELAWARE ENERGY SHARES, INC., )  
a Delaware Corporation, )  
 )  
Defendant. )

No. 84-C-151 *c*

*FILED*

*DEC 17 1984*

ORDER OF DISMISSAL

This matter having come on to be heard upon Notice of Dismissal filed herein by the plaintiff, the Court finds that all issues pending between the parties to this action have been settled.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the above-styled matter be dismissed with prejudice to further action.

DATED this 17 day of December, 1984.

*[Signature]*  
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 17 1984

Jack C. Silver, Jr.  
U.S. DISTRICT COURT

RYDER FINANCIAL & COMMUNICATION )  
SERVICES, INC., Formerly known )  
as FLEET CONTROL SERVICES, INC., )  
a Florida corporation )  
Plaintiff, )  
vs. )  
B&S MOTOR FREIGHT, INC., )  
an Oklahoma corporation, )  
Defendant. )

Case No. 84-C-848-BT

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 14 day of December, 1984.

  
UNITED STATES DISTRICT JUDGE  
THOMAS R. BRET

Entered

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,

Plaintiff,

v.

GLENN E. JACKSON; and  
CHARLENE JACKSON,

Defendants.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

DEC 17 1984

W. G. Silver  
Clerk

CIVIL ACTION NO. 84-C-650-B

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 14 day  
of December, 198<sup>4</sup>5. The Plaintiff appears by Layn R.  
Phillips, United States Attorney for the Northern District of  
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States  
Attorney; and the Defendants, Glenn E. Jackson, and Charlene  
Jackson, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that Defendant, Glenn E. Jackson, was served  
with Summons and Complaint on October 8, 1984; and that  
Defendant, Charlene Jackson, was served with Summons and  
Complaint on October 26, 1984.

It appears that the Defendants, Glenn E. Jackson, and  
Charlene Jackson, have failed to answer and their default has  
therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon  
a certain promissory note and for foreclosure of a mortgage  
securing said promissory note upon the following described real  
property located in Delaware County, Oklahoma:

A tract of land lying in SW $\frac{1}{4}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 27, Township 20 North, Range 23 East, more particularly described as follows, to-wit:

Beginning at a point 50 feet East and 11.0 feet North of the SW Corner of the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 27, Township 20 North, Range 23 East, Delaware County, Oklahoma, thence East 125 feet, thence North 200 feet, thence West 125 feet, thence South 200 feet to the point of beginning.

THAT on March 15, 1983, Glenn E. Jackson, and Charlene Jackson executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, their promissory note in the amount of \$23,200.00, payable in monthly installments with interest thereon at the rate of 12 percent per annum.

That as security for the payment of the above-described note, Glenn E. Jackson, and Charlene Jackson, executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a real estate mortgage dated March 15, 1983, covering the above-described property. Said mortgage was recorded on March 22, 1983, in Book 444, Page 726, in the records of Delaware County, Oklahoma.

The Court further finds that Defendants, Glenn E. Jackson, and Charlene Jackson, made default under the terms of the aforesaid promissory note and mortgage by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the Defendants, Glenn E. Jackson, and Charlene Jackson, are indebted to the Plaintiff in the sum of \$23,166.08 as of October 1, 1983, plus interest

thereafter at the rate of 12 percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Glenn E. Jackson, and Charlene Jackson, in the principal amount of \$23,166.08 as of October 1, 1983, plus interest thereafter at the rate of 12 percent per annum until judgment, plus interest thereafter at the current legal rate of 9.5 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of the Defendants, Glenn E. Jackson, and Charlene Jackson to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

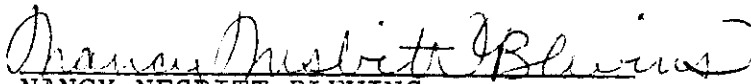
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS  
United States Attorney

  
NANCY NESBITT BLEVINS  
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DON R. CORNELIUS and  
NANCY L. CORNELIUS,

Plaintiffs,

vs.

WILLIAM P. CLARK, Secretary of the  
Interior, U. S. Department of Interior,  
KENNETH L. SMITH, Assistant Secretary  
for Indian Affairs, U. S. Department of  
Interior, JACK SHOEMATE,  
Superintendent of the Osage Agency,  
Bureau of Indian Affairs,  
U. S. Department of the Interior,  
GEORGE TALLCHIEF, Principal Chief  
of the Osage Tribe, OSAGE TRIBAL  
COUNCIL, governing body for the Osage  
Tribe, and FARMLAND INDUSTRIES,  
INC., a corporation,

Defendants.

**FILED**

**DEC 17 1984**

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

No. 84-C-927-E

**ORDER**

The Court having reviewed the Agreement of the Plaintiffs and Defendants, William P. Clark, Kenneth L. Smith, Jack Shoemate, George Tallchief, and Osage Tribal Council, hereby finds that the Plaintiffs' Application for Preliminary Injunction and Temporary Restraining Order, Complaint, and Motion for Mandamus are dismissed without prejudice under the terms and conditions set forth in the Agreement.

IT IS SO ORDERED.

SIGNED THIS 17<sup>th</sup> day of December, 1984.

S/ JAMES O. ELLISON

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

Entered  
FILED

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DEC 17 1984

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES R. NEVILLE,

Defendant.

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

CIVIL ACTION NO. 84-C-530-B

NOTICE OF DISMISSAL

COMES NOW the United States of America by  
Layn R. Phillips, United States Attorney for the Northern  
District of Oklahoma, Plaintiff herein, through Peter Bernhardt,  
Assistant United States Attorney, and hereby gives notice of its  
dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure,  
of this action without prejudice.

Dated this 4th day of December, 1984.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney

PETER BERNHARDT  
Assistant United States Attorney  
460 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 17<sup>th</sup> day of December,  
1984, a true and correct copy of the foregoing was mailed,  
postage prepaid thereon, to: James R. Neville, P.O. Box 226,  
Inola, Oklahoma 74036.

Assistant United States Attorney



Entered

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DEC 17 1984

EARL GREGORY,

Plaintiff

v.

DREIS & KRUMP MANUFACTURING  
COMPANY, an Illinois  
Corporation

Defendant

Case No. CIV-84-C-311 B

ORDER

Now on this 12 day of December, 1984, comes on to  
be heard at the Plaintiff's Motion to Dismiss the above cap-  
tioned action due to lack of diversity of necessary Defendants.  
The Court, being well advised of the premises, finds that the  
case should be dismissed without prejudice in filing another.

S/ THOMAS R. BRETT

JUDGE OF THE U.S. DISTRICT COURT

Entered

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

JERRY HAM and ESTHER HAM,  
Plaintiffs,

vs.

CLINTON SHAVER and  
MARILYN FOLK, guardian ad  
litem for JIM FOLK, a minor,  
Defendants.

No. 84-C-40-B

FILED

DEC 17 1984

J. Silver

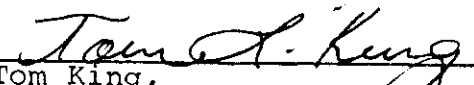
ORDER

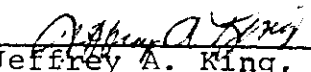
Pursuant to the Application filed by Defendant, Folk, to dismiss without prejudice their claim of indemnification against Defendant, Shaver, this Court without objection from the other Defendant, Shaver, does hereby dismiss the Cross-Claim without prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that this Application be sustained and that Defendant Folk's Cross-Claim be hereby dismissed without prejudice.

  
JUDGE OF UNITED STATES DISTRICT COURT

APPROVED AS TO FORM:

  
Tom King,  
Attorney for Clinton Shaver

  
Jeffrey A. King,  
Attorney for Marilyn Folk,  
guardian ad litem for  
Jim Folk, a minor

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DEC 17 1984

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILMA TERRY,

Defendant.

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

CIVIL ACTION NO. 84-C-968-C

NOTICE OF DISMISSAL

COMES NOW the United States of America by  
Layn R. Phillips, United States Attorney for the Northern  
District of Oklahoma, Plaintiff herein, through Nancy Nesbitt  
Blevins, Assistant United States Attorney, and hereby gives  
notice of its dismissal, pursuant to Rule 41, Federal Rules of  
Civil Procedure, of this action without prejudice.

Dated this 14th day of December, 1984.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney

*Nancy Nesbitt Blevins*  
NANCY NESBITT BLEVINS  
Assistant United States Attorney  
460 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 17th day of December,  
1984, a true and correct copy of the foregoing was mailed,  
postage prepaid thereon, to: Wilma Terry, 3129 South 98th East  
Avenue, #A, Tulsa, Oklahoma 74145.

*Nancy Nesbitt Blevins*  
Assistant United States Attorney

*Entered*

FILED

DEC 13 1984

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JOCK D. SILVER, CLERK  
U.S. DISTRICT COURT

LARRY LYNN RAIBOURN and SHIRLEY)  
ANN RAIBOURN, individually and )  
as parents of LARRY MATTHEW )  
RAIBOURN, a minor, )

Plaintiffs, )

No. 83-C-688-B

v. )

NATIONAL CHILD CARE CENTERS, )  
INC., , )

Defendant. )

*Notice of* DISMISSAL

Come now the plaintiffs and hereby dismiss with  
prejudice the above-entitled cause of action.

CHAPEL, WILKINSON, RIGGS, ABNEY  
& HENSON

By

*Bill V. Wilkinson*

Bill V. Wilkinson  
502 West 6th Street  
Tulsa, Oklahoma 74119  
Attorneys for plaintiffs

APPROVED:

*Stephen B. Wilkerson*  
Stephen B. Wilkerson  
Attorney for defendant

*Entered*

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JAMES E. REYNOLDS, a single )  
person; D. KNIERIEM; OKLAHOMA )  
OSTEOPATHIC FOUNDERS )  
ASSOCIATION, INC., d/b/a )  
OKLAHOMA OSTEOPATHIC HOSPITAL; )  
BOARD OF COUNTY COMMISSIONERS, )  
Creek County, Oklahoma; and )  
COUNTY TREASURER, Creek County )  
Oklahoma, )  
 )  
Defendants. )

**FILED**

DEC 13 1984

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

CIVIL ACTION NO. 83-C-763-E

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 13  
day of Dec, 1984. The Plaintiff appears by Layn R.  
Phillips, United States Attorney for the Northern District of  
Oklahoma, through Nancy Nesbitt Blevins, Assistant United  
States Attorney; the Defendant, Oklahoma Osteopathic Founders  
Association, Inc., d/b/a Oklahoma Osteopathic Hospital appears  
by its attorney, Mark W. Dixon; the Defendants, Board of County  
Commissioners and County Treasurer, Creek County, Oklahoma,  
appear by their attorney, David Young, District Attorney; the  
Defendant D. Knieriem appears by his attorney, Paul H. Petersen;  
and the Defendant, James E. Reynolds, appears not, but makes  
default.

The Court being fully advised and having examined the  
file herein finds that Defendant, D. Knieriem was served with a

copy of the Summons and Complaint on June 6, 1984; that the Defendant Oklahoma Osteopathic Founders Association, Inc., d/b/a Oklahoma Osteopathic Hospital acknowledged receipt of Summons and Complaint on September 21, 1983; that the Defendant Board of County Commissioners, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on September 12, 1983; and that the Defendant County Treasurer, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on September 9, 1983.

The Court further finds that the Defendant James E. Reynolds was served by publishing notice of this action in the Sapulpa Legal News, a newspaper of general circulation in Creek County, Oklahoma, once a week for six consecutive weeks beginning July 26, 1984, and continuing to August 30, 1984, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. §170.6(A) since counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant James E. Reynolds, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known address of the Defendant James E. Reynolds. The Court conducted an inquiry into the sufficiency of the service by publication to

comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, have fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to his present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendant served by publication.

It appears that the Defendant, D. Knieriem filed his entry of Appearance, Disclaimer, and Answer herein on June 26, 1984; that the Defendant, Oklahoma Osteopathic Founders Association, Inc., d/b/a Oklahoma Osteopathic Hospital filed its Answer herein on December 7, 1983; that the Defendants Board of County Commissioners, and County Treasurer, Creek County, Oklahoma, filed their Answer herein on December 1, 1983; and that the Defendant, James E. Reynolds has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described

real property located in Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Five (5), Block Eleven (11), BUSINESS MEN'S ADDITION to the City of Sapulpa, Creek County, Oklahoma, according to the recorded plat thereof.

That on July 26, 1982, the Defendant, James E. Reynolds, executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, his mortgage note in the amount of \$27,000.00, payable in monthly installments, with interest thereon at the rate of fifteen and one-half (15  $\frac{1}{2}$ ) percent per annum.

That as security for the payment of the above-described mortgage note, James E. Reynolds executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a real estate mortgage dated July 26, 1982, covering the above-described property. Said mortgage was recorded in the records of Tulsa County, Oklahoma, in Book 122, Pages 1547-1550.

The Court further finds that Defendant, James E. Reynolds, made default under the terms of the aforesaid mortgage note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant James E. Reynolds is indebted to the Plaintiff in the sum of \$27,273.60, as of August 1, 1982, plus interest thereafter at the rate of 15  $\frac{1}{2}$  percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.



The Court further finds that the Defendant D. Knieriem has disclaimed any interest in the real property which is the subject of this action.

The Court further finds that the Defendant Oklahoma Osteopathic Founders Association, Inc., d/b/a Oklahoma Osteopathic Hospital, has an interest in the real property which is the subject of this action because of a judgment in the amount of \$3,250.15, plus attorney fees of \$1,050.00, plus 10 percent interest per annum, entered against James E. Reynolds on July 24, 1979 in Case No. CSJ 79-2819. Said judgment was recorded in the records of Creek County, Oklahoma, in Book 79, Page 154. This interest is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Creek County, Oklahoma, has an interest in the real property which is the subject of this action by virtue of ad valorem taxes in the amount of \$ 194.89, for the year(s) 1984. This interest is superior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, James E. Reynolds, in the amount of \$27,273.60 as of August 1, 1982, plus interest thereafter at the rate of 15  $\frac{1}{2}$  percent per annum until judgment, plus interest thereafter at the current legal rate of 9.50 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of the Defendant, James E. Reynolds, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein, and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property;

Second:

In payment of the Defendant, County Treasurer, Creek County, Oklahoma, in the amount of \$ 194.89, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment lien of the Defendant Oklahoma Osteopathic Founder's Association, Inc., d/b/a Oklahoma Osteopathic Hospital, against said real property.

FOURTH:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

s/ JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS  
United States Attorney

Nancy Nesbitt Blevins  
NANCY NESBITT BLEVINS  
Assistant United States Attorney

Paul H. Petersen  
PAUL H. PETERSEN  
Attorney for Defendant D. Knieriem

Mark W. Dixon  
MARK W. DIXON  
as Attorney for Defendant Oklahoma  
Osteopathic Founders Association, Inc.,  
d/b/a Oklahoma Osteopathic Hospital

David Young  
DAVID YOUNG, District Attorney,  
Attorney for Defendants Board of County  
Commissioners, and County Treasurer,  
Creek County, Oklahoma

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DEC 13 1984

JACK GREEN and ALVERETTA  
GREEN,

Plaintiffs,

vs.

FIBREBOARD CORPORATION, et al.,

Defendants.

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

No. 83-C-580-C

ORDER OF DEFAULT JUDGMENT

This action was heard in open Court on November 30th, 1984, on the Motion of Plaintiffs for Default Judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure. The Defendant, Ryder Industries, Inc., has defaulted in this action and default was entered by the Court Clerk on November 2nd, 1984.

The Court has heard the testimony of Plaintiffs in open Court and has found that the Plaintiffs are entitled to recover damages from Defendant.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff, Jack Green, recover from the Defendant, Ryder Industries, Inc., the sum of \$275,000.00 together with interest thereon at the legal rate from and after November 30th, 1984, together with his costs of this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff, Alveretta Green, recover from the Defendant, Ryder Industries, Inc., the sum of \$25,000.00, together with interest thereon at the legal rate from and after November 30th, 1984, together with the costs of this action.

Dated this 12 day of Dec, 1984.

(Signed) H. Dale Cook

JUDGE H. DALE COOK,  
UNITED STATES DISTRICT JUDGE

LAW OFFICES

UNGERMAN,  
CONNER &  
LITTLE

MIDWAY BLDG.  
2727 EAST 21 ST.  
SUITE 400

P. O. BOX 2099  
TULSA, OKLAHOMA  
74101

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC 12 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

WARREN E. AVIS,  
Plaintiff,

v.

LAYTON OIL COMPANY,  
DELAWARE FLOOD COMPANY,  
WILLIAM DOUGLAS LAYTON and  
M. MICHAEL GALES,  
Defendants.

No. 83-C-536-E

ORDER OF DISMISSAL WITH PREJUDICE

NOW on the 11<sup>th</sup> day of December, 1984, pursuant to  
Rule 41, Federal Rules of Civil Procedure, and the Joint  
Stipulation of the parties herein for dismissal of this cause  
with prejudice,

IT IS ORDERED that this cause be, and the same is  
hereby, DISMISSED WITH PREJUDICE.

S/ JAMES O. ELLISON

\_\_\_\_\_  
United States District Judge

*Entered*

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

DEC 12 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

RONALD A. SPELMAN, et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
THE F&M BANK & TRUST COMPANY, )  
et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

No. 80-C-106-Bt

ORDER

NOW, on this 12 day of December, 1984, there comes on for consideration the Application to Dismiss filed by The F&M Bank & Trust Company seeking to dismiss its claim as against the defendants Andrew J. Haswell and J. Dell Gordon.

After reviewing the application and the pleadings on file herein and upon consideration hereof, the Court finds that F&M's application should be granted.

IT IS THEREFORE ORDERED that the cross-claim against Andrew J. Haswell and J. Dell Gordon asserted by the F&M Bank & Trust Company is dismissed, with prejudice.

S/ THOMAS R. BRETT

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

4810-007  
HHP/clr  
COLL25

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MID-STATES AIRCRAFT ENGINES, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JOSEPH C. RANDOLPH, JACK RHOADES, )  
JOE DUNCAN, JACK RHOADES AIRCRAFT )  
SALES, INC., A Corporation, and )  
JACK RHOADES AVIATION, INC., A )  
Corporation, )  
 )  
Defendants. )

No. 84-C-438E ✓

**FILED**

DEC 12 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

AGREED JUDGMENT

Now on the 12<sup>th</sup> day of December, 1984, this matter comes before the Court for its approval of the Agreed Judgment, prepared by Plaintiff's counsel and approved as to form by counsel for both Plaintiff, MID-STATES AIRCRAFT ENGINES, INC. and the Defendant, JOSEPH C. RANDOLPH. This pleading is being presented to the Court in order to reduce to judgment the provisions of the Joint Stipulation of Liability as to Defendant, JOSEPH C. RANDOLPH, approved by counsel for both parties as well as the parties, themselves, and filed with the Court Clerk's office on November 27, 1984.

WHEREFORE, it is hereby ordered, adjudged and decreed that the Plaintiff, MID-STATES AIRCRAFT ENGINES, INC., be granted judgment in its favor and against the Defendant, JOSEPH C. RANDOLPH, in the amount of \$5,000.00 with interest

on that amount at the rate of 15% per year from November 7, 1984 until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, JOSEPH C. RANDOLPH, is to pay the sum of \$5,000, plus interest, on or before January 15, 1985, and that execution of this judgment will be stayed until that date.

*James H. O'Connell*  
JUDGE

ALLIS & VANDIVORT, INC.

By *Harold H. O'Connell*  
Attorneys for Plaintiff,  
Mid-States Aircraft Engines,  
Inc.

BAYH, TABBERT & CAPEHART

By *Richard J. Dark*  
Attorneys for Defendant,  
Joseph C. Randolph



FILED

DEC 11 1984

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JOHN EDWARD BURROW,

Plaintiff,

vs.

GEORGE WAYMAN, et al.,

Defendants.


No. 82-C-1078-E

O R D E R

NOW on this 11<sup>TH</sup> day of December, 1984 comes on for hearing the above-styled case and the Court, being fully advised in the premises finds as follows:

Telephone conference was held at 1:00 p.m. on the 10th day of December, 1984 at which time the Court inquired of Plaintiff his theory of the case and what proof he had in support of same. Upon presentation to the Court, Plaintiff was asked if he wished to proceed with this action and he replied he did not based upon the Court's outlining the burden and type of proof he would be required to bring forward. The Court inquired whether he wished the case to be set for trial or whether he wished it dismissed at this time and Plaintiff agreed the case should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this case be and is hereby dismissed without prejudice.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 10 1984

W. G. OLIVER, CLERK  
DISTRICT COURT

PIPELINE INDUSTRY BENEFIT  
FUND,

Plaintiff,

vs.

No. 84-C-721-B

MARLENE (FARRIS) SUEHL and  
the ESTATE OF MURF HENRY  
FARRIS,

Defendants.


JOURNAL ENTRY OF JUDGMENT

This matter comes on before me, the undersigned United States District Judge, on Plaintiff Pipeline Industry Benefit Fund's Motion for Default Judgment against Defendant Estate of Murf Henry Farris, and also upon the Motion for Judgment on the Pleadings of Defendant Marlene (Farris) Suehl. The record reflects that Defendant Marlene (Farris) Suehl has filed an Answer in this case, and that Defendant Estate of Murf Henry Farris has been served with process on October 23, 1984, but has not answered or filed an appearance and is in default. The Court, having examined the record in this case, and being fully advised in the premises,

IT IS ORDERED, ADJUDGED AND DECREED that Defendant Marlene (Farris) Suehl is awarded judgment against Plaintiff Pipeline Industry Benefit Fund in the amount of \$10,000.00, and Plaintiff is ordered to pay the same to Defendant Marlene (Farris) Suehl.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff Pipeline Industry Benefit Fund have judgment against Defendant Estate of Murf Henry Farris, and that the satisfaction by said Plaintiff of the Judgment of Marlene (Farris) Suehl by payment of the \$10,000.00 satisfies any obligation Plaintiff may have, and Plaintiff is forever discharged of all its liability to the Estate of Murf Henry Farris for the payment of death benefits with respect to said Murf Henry Farris.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party in this case shall bear its own costs.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

Entitled

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 10 1984

JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

RONALD BEAVER,

Plaintiff,

v.

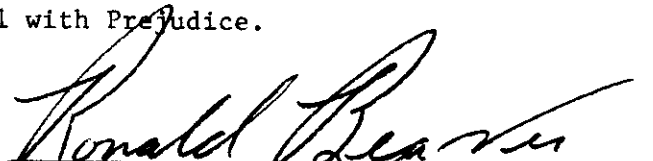
No. 84-C-724-B


SHELTER INSURANCE COMPANY, a/k/a  
SHELTER MUTUAL INSURANCE COMPANY,  
a/k/a MFA MUTUAL INSURANCE COMPANY,  
a/k/a COUNTRYSIDE CASUALTY COMPANY,

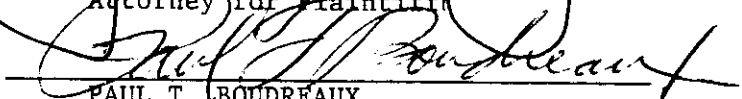
Defendants.)

STIPULATION FOR DISMISSAL WITH PREJUDICE

COMES NOW the plaintiff, his attorney and defendants' counsel and would show the Court that this matter has been compromised and settled and therefore move the Court for an Order of Dismissal with Prejudice.

  
RONALD BEAVER

  
JAMES F. SELF, JR.  
Attorney for Plaintiff

  
PAUL T. BOUDREAUX  
Attorney for Defendants

FILED

DEC 12 1984

JACK C. SILVER, CLERK  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

Now on this 12 day of Dec, 1984, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

S/ THOMAS R. BRETT

United States District Judge

*Entered*

FILED  
DEC 10 1984  
JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STANDARD OFFICE SYSTEMS,  
INC.,

Plaintiff,

vs.

GESTETNER CORPORATION,

Defendant.

No. 84-C-34-B

ORDER OF DISMISSAL

On this 7 day of *December*, 1984, upon written application of the parties for an order of dismissal with prejudice of any and all claims of the parties each against the other, the Court, having examined said application, finds that said parties have entered into a compromise settlement covering any and all claims of the parties each against the other, and have requested the Court to dismiss any and all claims of the parties each against the other with prejudice to any future action, and the Court, being fully advised in the premises, finds that said above-named action and the claims of the parties each against the other should be dismissed; it is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that any and all claims of the parties each against the other be and the same are hereby dismissed with prejudice to any further action.

**S/ THOMAS R. BRETT**

\_\_\_\_\_  
THOMAS R. BRETT, JUDGE

*Entered*

FILED

DEC 10 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EMPLOYERS NATIONAL INSURANCE  
CORPORATION,

Plaintiff,

vs.

MID-CONTINENT CASUALTY  
CORPORATION,

Defendant.

No. 84-C-603-E ✓

O R D E R

This matter is before the Court upon the motion of defendant Mid-Continent for summary judgment and the motion of plaintiff Employers to strike.

Plaintiff urges this Court to strike from the answer of the defendant those paragraphs which concern the defense of res judicata, arguing that the same do not reach the ultimate issue before the Court. Paragraphs 4 and 5 of defendant's answer allege that an appeal from the decisions of the workers' compensation courts of the state of Kansas was lodged in the District Court of Logan County, Kansas under case number 83-C-25, and that all of the issues between the parties in that case became the subject of a dismissal with prejudice on November 16, 1983. Defendant alleges that the issues of this complaint were directly in issue in the Logan County cause, and that the dismissal with prejudice precludes any further litigation of any of the issues pending between any of the parties to the Kansas case. Such allegations, if true, would act as a bar to any

further proceedings in this action. Defendant has properly pled the defense of res judicata, and such defense is not subject to a motion to strike.

The defendant Mid-Continent Casualty Co. moves this Court for an order granting summary judgment, upon the argument that the Kansas dismissal with prejudice precludes the further litigation of issues which were before the Court in the previous suit. A previous judgment is a bar to relitigation if the cause of action is the same in the subsequent suit. The judgment in a former action will be a bar provided that the evidence necessary to sustain a judgment in the present action would have authorized a judgment in the former action. McCaughey v. Lester, 278 P.2d 826, 829 (Okla. 1954).

Upon a review of the arguments of the parties and the exhibits submitted with the briefs, the Court finds that the parties and the causes of action are the same in this suit as they were in the appeal filed before the District Court of Logan County, Kansas. In the Logan County case plaintiff here and its insured E. L. Farmer brought the action as an appeal from the orders of the workers' compensation courts. The appeal placed at issue all features of the order of the workers' compensation law judge, the orders of the review director and all of the issues raised in those proceedings. Plaintiff here admits in its answers to interrogatories propounded by the defendant that it asserted and argued in the district court case that all or a portion of the compensation benefits payable to the claimant

should be apportioned to Sinclair Construction Co. and the defendant herein. Plaintiff also states in its brief in support of motion to strike that throughout the proceedings in Kansas it prayed for a contribution as between it and Mid-Continent Insurance Co. The exhibits submitted with the briefs also indicate that the apportionment issue was briefed by the parties in the Kansas court.

On November 17, 1983 the district court of Logan County filed a journal entry of dismissal with prejudice upon the oral motion of all the parties for a dismissal of the workers' compensation appeal. The claimant and the respondents, plaintiff here and defendant here all appeared. The order states that "all of the parties show to the court that all matters in controversy between the parties have been settled and that this action should be dismissed with prejudice." It is clear that a dismissal with prejudice upon the settlement of a lawsuit and with the consent of the parties is an adjudication on the merits. . See Creek Indians National Council v. Sinclair, 142 F.2d 842, cert denied, 65 S.Ct. 269; Kellenberger v. Guaranty Loan & Investment Corp. of Tulsa, 530 P.2d 574 (Okla. App. 1974).

No allegations are made here that the previous judgment was void or that any fraud was involved in the obtaining of the previous judgment such that the doctrine of res judicata would not apply. Plaintiff however asks this Court, as a court of equity, to prevent the defendant from escaping further without having to answer to any court why it was allowed to collect premiums based on the injured man's hours worked and not be



required to contribute to the injured's compensation. If the matter of contribution was properly before this Court, plaintiff's arguments could be considered. Unfortunately, however, the opportunity to litigate that issue by trial was waived by settlement of all issues in the lawsuit before the District Court of Logan County, Kansas, and this Court may not consider such issues in this action. A final judgment of a court of competent jurisdiction on the merits precludes further litigation by the same parties of the same cause of action even if the Court was mistaken as to the facts or the law in the previous action. See Providential Development Co. v. U.S. Steel Co., 236 F.2d 277 (10th Cir. 1956); Woodrow v. Ewing, 263 P.2d 167 (Okla. 1953); Smith v. Williamson, 256 P.2d 174 (Okla. 1953). It is clearly then not within the discretion of this Court to relitigate issues settled in a previous litigation, and the Court must therefore decline to do so.

Since the defense of res judicata is a bar to the relitigation of the contribution issue, this Court need not reach the merits of this dispute, and may grant summary judgment. Upon the undisputed facts and the applicable law defendant herein is entitled to summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of plaintiff to strike be and the same is hereby denied.

IT IS FURTHER ORDERED that the motion of defendant for

summary judgment be and the same is hereby granted.

ORDERED this 7TH day of December, 1984.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC 10 1984

FREDA T. ARON,  
Plaintiff.

vs.

BOB BAKER, et al.,  
Defendants.

No. 84-C-757-E

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

NOW on this 7<sup>TH</sup> day of December, 1984, the Court has before it the Motion for Dismissal Without Prejudice filed by Plaintiff in the above styled case pursuant to discussion of the same at Initial Status Conference at which time Defendants offered no objection. Subsequently, Defendants filed objection, seeking costs of the action.

The Court has reviewed the pleadings filed and finds Plaintiff's motion should be granted. The Court declines to impose costs as a condition of dismissal and therefore overrules Defendants' objection.

It is so ORDERED.

JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JACK EDWARD ACREE,

Petitioner,

v.

TIM WEST, et al.,

Respondent.

No. 84-C-88-B

O R D E R

This matter comes before the Court on the petition for writ of habeas corpus of Jack Edward Acree. Respondents have objected to the petition and submitted a transcript of trial proceedings. For the reasons set forth below, the petition for writ of habeas corpus is hereby denied.

Petitioner was convicted of second degree burglary after former conviction of a felony in the District Court of Pottawatomie County, Oklahoma, on September 15, 1982, in Case No. CRF-82-156. He was sentenced to life imprisonment. The petitioner appealed his conviction to the Oklahoma Court of Criminal Appeals, which affirmed the conviction on January 6, 1984, in Case No. F-83-182

Petitioner, in his petition for writ of habeas corpus, initially asserted three grounds for relief: 1) evidence introduced at trial was the product of an illegal search; 2) the State failed during the preliminary hearing to prove a burglary had been committed; and 3) the District Court failed to complete a hearing on petitioner's motion to quash and suppress evidence.

This Court on June 6, 1984, entered an order in which it concluded petitioner had failed to exhaust state remedies with regard to grounds two and three. It directed petitioner to elect whether he wished to delete those grounds or proceed with the original petition. Plaintiff subsequently deleted grounds two and three. Thus, the only issue remaining is plaintiff's contention that evidence introduced at trial was the product of an illegal arrest.

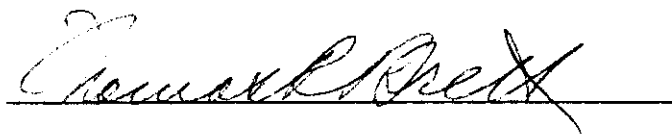
Fourth Amendment claims are not cognizable in federal habeas corpus proceedings which attack state convictions if the state court has provided an opportunity for full and fair litigation of the claims. Stone v. Powell, 428 U.S. 465, 495 (1976); Sanders v. Oliver, 611 F.2d 804, 807 (10th Cir. 1979); McDaniel v. Oklahoma, 582 F.2d 1242, 1243 (10th Cir. 1979). Thus, if the state court provided an opportunity for full and fair hearing of petitioner's claim concerning the legality of the arrest, this Court may not conduct an independent review of the merits of petitioner's claim herein.

The Court has reviewed the transcript of the trial and determined the petitioner was given a full and fair opportunity to present his Fourth Amendment claim to the state court. On September 15, 1982, during trial of the charges against petitioner, petitioner's attorney, George Van Wagner, objected to the introduction of evidence he contended was obtained as a result of an illegal arrest. Out of the hearing of the jury, Van Wagner was permitted to present oral argument on the objection,

and the assistant district attorney then responded. At the close of the arguments, the court overruled the objection. [See transcript, pp. 60-66]. Subsequently, the issue was presented to the Court of Criminal Appeals on direct appeal and the trial court's ruling was affirmed.

Therefore, pursuant to Stone v. Powell, supra, the Court finds petitioner's claim for violation of his Fourth Amendment rights is not cognizable in this proceeding, and the petition for writ of habeas corpus must be denied.

ENTERED this 7<sup>th</sup> day of December, 1984.

A handwritten signature in cursive script, reading "Thomas R. Brett", is written over a horizontal line.

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

*Entered*

**FILED**

**DEC 10 1984**

**Jack C. Silver, Clerk  
U. S. DISTRICT COURT**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EMPLOYERS NATIONAL INSURANCE )  
CORPORATION, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MID-CONTINENT CASUALTY )  
CORPORATION, )  
 )  
Defendant. )


No. 84-C-603-E

**JUDGMENT**

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiff Employers National Insurance Corporation take nothing from the Defendant Mid-Continent Casualty Corporation, that the action be dismissed on the merits, and that the Defendant Mid-Continent Casualty Corporation recover of the Plaintiff Employers National Insurance Corporation its costs of action.

DATED at Tulsa, Oklahoma this 17<sup>th</sup> day of December, 1984.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

*Entered*

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

DEC 10 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

LONNIE RAY THOMAS;  
LORRAINE U. THOMAS;  
OTASCO; ROSS HUTCHINS,  
Trustee; COUNTY TREASURER,  
Washington County, Oklahoma;  
and BOARD OF COUNTY  
COMMISSIONERS, Washington  
County, Oklahoma,

Defendants.

Civil Action No. 84-C-47-E ✓

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 7<sup>th</sup> day  
of December, 1984. The Plaintiff appears by Layn R.  
Phillips, United States Attorney for the Northern District of  
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States  
Attorney; the Defendant, OTASCO, Inc., appears by its attorneys  
Martin B. Bernert, and Susan Cothern Boyd; the Defendants County  
Treasurer, Washington County, Oklahoma, and Board of County  
Commissioners, Washington County, Oklahoma, appear by their  
attorneys Craig D. Corgan, District Attorney, through Lou Ambler,  
Assistant District Attorney; and the Defendants Lonnie Ray  
Thomas, Lorraine U. Thomas, and Ross Hutchins, Trustee, appear  
not, but make default.



The Court being fully advised and having examined the file herein finds that Defendant, Ross Hutchins, Trustee, was served with a copy of the Summons and Complaint on April 11, 1984; that the Defendant County Treasurer, Washington County, Oklahoma acknowledged receipt of Summons and Complaint on January 26, 1984; and that Defendant Board of County Commissioners, Washington County, Oklahoma, acknowledged receipt of Summons and Complaint on January 31, 1984.

The Court further finds that the Defendants, Lonnie Ray Thomas, and Lorraine U. Thomas, were served by publishing notice of this action in the Examiner-Enterprise, Bartlesville, Oklahoma, a newspaper of general circulation in Washington County, Oklahoma, once a week for six consecutive weeks beginning August 16, 1984, and continuing to September 20, 1984, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. § 170.6(A) since counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Lonnie Ray Thomas and Lorraine U. Thomas, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears

from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known addresses of the Defendants, Lonnie Ray Thomas and Lorraine U. Thomas. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Farmers Home Administration, and its attorneys, Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United Attorney, have fully exercised due diligence in ascertaining the true names and identities of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that the Defendant, OTASCO filed its disclaimers herein on February 2, 1984, and August 9, 1984; that the Defendants, County Treasurer, Washington County, Oklahoma, and Board of County Commissioners, Washington County, Oklahoma filed their Answer herein on January 30, 1984; and that the Defendants, Lonnie Ray Thomas, Lorraine U. Thomas, and Ross

Hutchins, Trustee, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain promissory note, and for foreclosure of a real estate mortgage securing said promissory note upon the following described real property located in Washington County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirteen (13), Eastman 2nd Addition to Ochelata, Oklahoma.

That on August 26, 1977, Lonnie R. Thomas and Lorraine U. Thomas executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$25,750.00, payable in monthly installments with interest thereon at the rate of eight percent per annum.

That as security for the payment of the above described note, Lonnie R. Thomas and Lorraine U. Thomas, executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated August 26, 1977, covering the above-described property. Said mortgage was recorded in Book 694, Page 174, in the records of Washington County, Oklahoma.

That Lonnie R. Thomas is one and the same person as the Defendant Lonnie Ray Thomas.

The Court further finds that Defendants, Lonnie Ray Thomas and Lorraine U. Thomas, made default under the terms of

the aforesaid promissory note and mortgage by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the Defendants, Lonnie Ray Thomas and Lorraine U. Thomas, are indebted to the Plaintiff in the sum of \$27,118.52, plus accrued interest of \$9,161.38 as of November 30, 1983, plus interest thereafter at the rate of \$5.9438 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Washington County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$407.57. Said lien is superior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Lonnie Ray Thomas and Lorraine U. Thomas, in the principal amount of \$27,118.52, plus accrued interest of \$9,161.38 as of November 30, 1983, plus interest thereafter at the rate of \$5.9438 per day until judgment, plus interest thereafter at the current legal rate of 9.50 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Washington County, Oklahoma, have

and recover judgment in the amount of \$407.57 for ad valorem taxes, plus its costs in this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Lonnie R. Thomas and Lorraine U. Thomas, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of the sale of said real property;

Second:


In payment of the Defendant, County Treasurer, Washington County, Oklahoma, in the amount of \$407.57, ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;


The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


  
UNITED STATES DISTRICT JUDGE

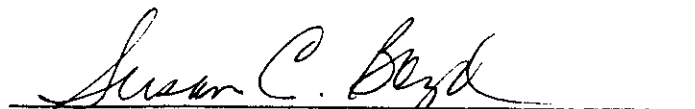
APPROVED:

LAYN R. PHILLIPS  
United States Attorney

  
NANCY NESBITT BLEVINS  
Assistant United States Attorney

CRAIG D. CORGAN  
District Attorney

  
LOU AMBLER  
Assistant District Attorney

  
SUSAN COTHERN BOYD  
Attorney for Defendant OTASCO, Inc.

Entered

FILED  
DEC -7 1984  
JACOB E. BAKER, CLERK  
U.S. DISTRICT COURT

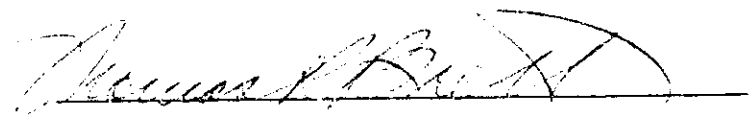
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BILLY J. C. INGRAM and	)	
MARSALETE INGRAM,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 83-C-890-B
	)	
FIBREBOARD CORPORATION, et al.,	)	
	)	
Defendants.	)	

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered herein this date\*, Judgment is hereby entered in favor of the plaintiff, Billy J. C. Ingram, and against the defendant, Ryder Industries, Inc., in the amount of \$17,000.00; in favor of the plaintiff, Marsalete Ingram, and against the defendant, Ryder Industries, Inc., in the amount of \$15,000.00; pre-judgment interest at the rate of 15% per annum from October 21, 1983 (the date of filing of the complaint); post-judgment interest at the rate of 9.50% per annum from this date; plus the costs of this action.

ENTERED this 7<sup>th</sup> day of December, 1984.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

\* Of the total damages experienced by the plaintiffs of \$115,000.00, \$83,000.00 has previously been paid by other defendant asbestos product manufacturers.

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MGF OIL CORPORATION,

Plaintiff,

v.

JOHN B. MILAM,

Defendant.

No. 84-C-143-C

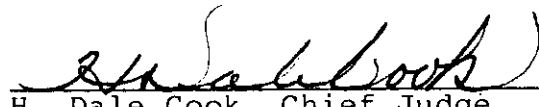
FILED

DEC - 7 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JUDGMENT

Pursuant to an agreement between the parties, the Court hereby finds the specific amount due to plaintiff from defendant, including sums due for prejudgment interest, costs and attorneys' fees, in accordance with this Court's judgment of September 26, 1984, is \$42,480.08. It is therefore ordered that plaintiff, MGF Oil Corporation, have judgment against the defendant, John B. Milam, in the amount of \$42,480.08 which sum shall draw post-judgment interest at the rate of 9.5% per annum from and after September 26, 1984 until paid.

  
H. Dale Cook, Chief Judge  
U.S. District Court

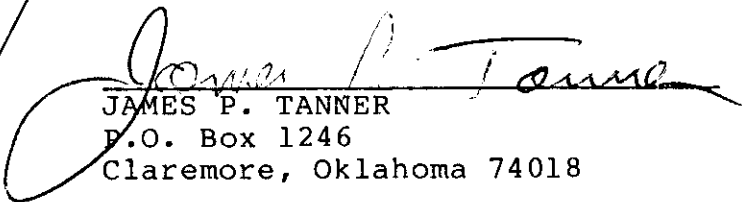
APPROVED AS TO FORM:

McAFEE & TAFT  
A Professional Corporation  
5th Floor, 100 Park Avenue Building  
Oklahoma City, Oklahoma 73102

By Robert W. Dace  
Joseph H. Bocock  
Robert W. Dace

Attorneys for Plaintiff,  
MGF Oil Corporation





JAMES P. TANNER

P.O. Box 1246

Claremore, Oklahoma 74018

Attorney for Defendant,  
John B. Milam

COURT L E T

DEC - 7 1964

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UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BERTRAM H. DEAN, JR., a single  
person; PATRICIA DEAN; and  
HOUSEHOLD FINANCE CORPORATION  
OF OKLAHOMA, INC.,

Defendants.

**FILED**

DEC 27 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

CIVIL ACTION NO. 83-C-575-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 6 day  
of Dec 1984. Plaintiff appears by Layn R. Phillips,  
United States Attorney for the Northern District of Oklahoma,  
through Peter Bernhardt, Assistant United States Attorney, the  
defendants, Patricia Dean and Household Finance, appear not, but  
make default.

The Court being fully advised and having examined the  
file herein finds that the defendant, Bertram H. Dean, Jr., was  
personally served with Summons and Complaint by the United States  
Marshal Deputy on July 26, 1983, and that a letter received from  
Bertram H. Dean was received August 18, 1983, and filed on  
September 9, 1983, as the Answer of the defendant, Bertram H.  
Dean, Jr. Since the Answer did not deny any of the allegations  
of plaintiff's complaint and admitted that the mortgage sued upon  
is past due, an Order granting plaintiff a Judgment on the  
Pleadings for the amounts alleged in the complaint, less any sums  
paid by the defendant, and for foreclosure of the real estate  
mortgage was entered April 18, 1984.

The Court further finds that the defendant, Patricia Dean, was served by publishing notice of this action in the Tulsa Daily Business Journal and Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six consecutive weeks beginning June 4, 1984, and continuing to July 9, 1984, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. §170.6(A) since counsel for the plaintiff does not know and with due diligence cannot ascertain the whereabouts of the defendant, Patricia Dean, and service cannot be made upon said defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the defendant, Patricia Dean. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, have fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to her present or last known places of

residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the plaintiff, both as to the subject matter and the defendant served by publication. The defendant, Patricia Dean, failed to answer and her default has been entered by the Clerk of this Court on August 3, 1984. That the defendant, Household Finance Corporation of Oklahoma, was served with a Summons and Complaint by a deputy United States Marshal on April 10, 1984, in care of The Corporation Company, and failed to answer or otherwise plead, and its default has been entered by the Clerk of this Court on August 3, 1984.

The Court further finds that this is a suit based upon a certain promissory note for foreclosure of a real estate mortgage securing said promissory note upon the following described real property located in Tulsa County, Oklahoma:

The West Half (W/2) of Lot Four (4),  
Block Three (3), NORTH TURLEY SECOND  
ADDITION to the Town of Turley,  
State of Oklahoma, according to the  
recorded Plat thereof.

That on June 29, 1982, Bertram H. Dean, Jr. executed and delivered to the Administrator of Veterans Affairs his promissory note in the amount of \$41,500.00 payable in monthly installments with interest thereon at the rate of 15½ percent per annum.

That as security for the payment of the above-described note, Bertram H. Dean, Jr., a single person, executed and delivered to the Administrator of Veterans Affairs a real estate

mortgage dated June 29, 1982, covering the above-described property. The mortgage is recorded in Book 4622, pages 1786 through 1789, of the records of Tulsa County, Oklahoma. That on October 28, 1982, the Administrator of Veterans Affairs assigned and transferred said mortgage to The Lomas & Nettleton Company as recorded December 10, 1982, in Book 4655 at page 961, of the records of Tulsa County, Oklahoma. On February 25, 1983, The Lomas & Nettleton Company assigned this mortgage to the Administrator of Veterans Affairs as recorded in Book 4675 at page 982 of the records of Tulsa County, Oklahoma.

The Court further finds that the defendant, Bertram H. Dean, Jr., made default under the terms of the aforesaid promissory note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued and that by reason thereof the defendant, Bertram H. Dean, Jr., is indebted to the plaintiff in the sum of \$41,481.47 plus interest at the rate of 15½ percent per annum from October 1, 1982, the date of default, until judgment, plus interest thereafter at the legal rate until paid, plus the costs of this action accrued and accruing.

The Court further finds that the defendants, Patricia Dean and Household Finance Corporation of Oklahoma, have no right, title, interest or claim in or to the real property described herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff, United States of America, have and recover judgment against the defendant, Bertram H. Dean, Jr., in the amount of

\$41,481.47 plus interest at the rate of 15½ percent per annum from October 1, 1982, until judgment, plus interest thereafter at the current legal rate of 9.50 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of the defendant, Bertram H. Dean, Jr., to satisfy the money judgment of the plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the plaintiff, including cost of the sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of the above described real property under and by virtue of this judgment and decree, all of the defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any

right, title, interest or claim in or to the subject real property or any part thereof.

s/H. DALE COOK  
UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS  
United States Attorney

PETER BERNHARDT  
Assistant United States Attorney



**FILED**

DEC 7 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

vs.

Defendant.

✓

It is Ordered and Adjudged pursuant to the verdict of the jury duly returned and filed November 28, 1984 as follows:

1. Judgment is hereby entered in favor of the defendant, Burlington Northern Railroad Company, with regard to the causes of actions by the plaintiffs, James Troxell, Jo Troxell, and Empire Fire & Marine Insurance Company;
2. Judgment is hereby entered in favor of the defendant, Burlington Northern Railroad Company, upon its counterclaim against plaintiff, James Troxell, in the amount of \$1,450.29 (85% of defendant's stipulated damages of \$1,706.22);
3. Judgment is hereby entered in favor of the defendant and against the plaintiffs for the costs of this action.

H. Dale Cook  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

HAROLD KENNETH THOMPSON and  
HELEN LOUISE THOMPSON,

Plaintiffs,

vs.

FIBREBOARD CORPORATION, et al,

Defendants.

DEC - 7 1984

No. 82-C-836-2 Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

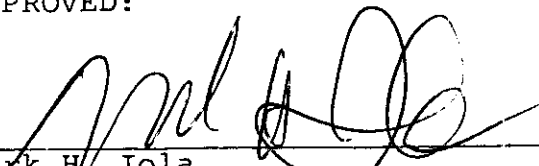
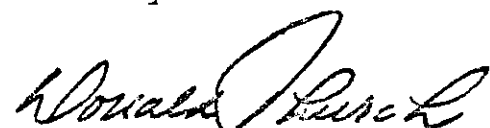
This matter came on for consideration on this 6  
day of November, 1984 upon the Joint Application for Dismissal  
With Prejudice filed herein. The Court being duly advised in  
the premises, finds that said Application for Dismissal is in  
the best interest of justice and should be approved, and the  
above styled and numbered cause of action dismissed with preju-  
dice to a refiling.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the  
Court that the Joint Application for Dismissal With Prejudice by  
the parties be and the same is hereby approved and the above  
styled and numbered cause of action and Complaint is dismissed  
with prejudice to a refiling as to the defendant, Nicolet, Inc.

s/H. DALE COOK

H. DALE COOK, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF  
OKLAHOMA

APPROVED:

  
\_\_\_\_\_  
Mark H. Iola  
Attorney for the Plaintiffs  
\_\_\_\_\_  
Donald Church  
Attorney for the Defendant,  
Nicolet, Inc.

FILED

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FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC - 5 1984

IN RE

REPUBLIC TRUST & SAVINGS  
COMPANY,

Debtor.

)  
)  
)  
)  
)  
)

Case No. 84-C-904-E ✓

ORDER DENYING MOTION  
FOR LEAVE TO APPEAL

This matter is before the Court upon the motion of the Committee of Unsecured Certificate Holders of Republic Trust & Savings for leave to appeal the Order of the Bankruptcy Court for the Northern District of Oklahoma dated October 31, 1984. The subject order appointed as Trustee of the property of the estate of the Debtor Republic Trust & Savings Co., Jack D. Jones, pursuant to 11 U.S.C. § 1104(a)(2).

Republic Trust & Savings is a wholly owned subsidiary of Republic Bancorporation, Inc.. Republic Financial Corporation is also a wholly owned subsidiary of Republic Bancorporation, Inc. All three of these entities filed for reorganization in the Bankruptcy Court for the Northern District of Oklahoma on September 24, 1984. On October 30, 1984 the Bankruptcy Court heard applications of the Committee of Unsecured Certificate Holders for both Republic Financial Corporation and Republic Trust & Savings for the appointment of trustee. No objection was raised to such appointment by the Debtors in Possession. The Court appointed Jack D. Jones as Trustee for both Republic Trust & Savings and Republic Financial Corporation. The movant has no

objection to the appointment of Mr. Jones, nor any questions in regard to the integrity or qualifications of Mr. Jones, but objects to the appointment of a single Trustee for both entities, arguing that such an appointment puts the Trustee in a position of representing conflicting interests. In support of this statement, the movant cites certain intercompany transactions between and among Republic Trust & Savings, Republic Financial Corporation, and Republic Bancorporation, Inc., such as the purchase of loans, loan participation, and unsecured loans to the Bancorporation.

The Court has received objections to the appeal from the Committee of Unsecured Creditors for Republic Bancorporation, Inc., the unsecured certificate holders committee of Republic Financial Corporation, the Debtor Republic Trust & Savings Co., and the Oklahoma Department of Securities. All parties argue that the order to be appealed does not meet the criteria which determine an appealable interlocutory order. The parties also argue that the appeal is unnecessary and premature and will result in increases in the administrative costs of all three debtor corporations.

The jurisdiction of the district courts to hear appeals from interlocutory orders of the Bankruptcy Court is governed by Title 28 U.S.C. § 1334(b). That section provides in pertinent part:

The district courts ... shall have jurisdiction of appeals from interlocutory orders and decrees of bankruptcy courts but only by leave of the district court to which the appeal is taken.

While § 1334(b) does not itself provide any guidelines regarding the exercise of the court's discretion, the legislative history indicates that an analogy may be made to the standards embodied in 28 U.S.C. § 1292(b). In re Den-Col Cartage and Distribution, Inc., 20 B.R. 645 (D.C. Colo. 1982); In re Codesco, Inc., 30 B.R. 472 (S.D. N.Y. 1983); 1 Collier on Bankruptcy, § 3.03[7][D][v]. The underlying thrust of § 1292 is to provide an exception to the "final order" rule in circumstances where there exists a controlling question of law as to which there is a substantial ground for difference of opinion, and where such appeal would materially advance the ultimate termination of the litigation. The statute is intended to eliminate or substantially reduce delays which may be caused by a refusal to hear an appeal of an order during the pendency of a lawsuit.

It is clear to this Court that neither efficiency nor justice will be served by the entertainment of an appeal of the order naming the trustee before any actual conflicts are found to exist, or before it is determined that the procedures available under the code will not remedy any alleged conflicts. Neither is there a legal dispute before this Court, the resolution of which would expedite the proceedings. The trustee was appointed properly according to 11 U.S.C. § 1104(c), and the movant does not argue that the trustee fails to meet the requirement that he be "disinterested" or that the Bankruptcy Court did not follow proper procedures in his appointment.

Even if this Court were to consider the appeal, such

termination of the litigation, because this Court would in all probability decline to overturn the order of the Bankruptcy Court. There is no evidence that the Bankruptcy Court below acted arbitrarily or capriciously or abused its discretion in any way. See In re Sentinel Bonding Agency, Inc., 24 B.R. 551 (W.D. Okla. 1981). No arguments have been made in regard to any irregularities in the appointment process, nor has the propriety of the appointment of Mr. Jones been attacked, with the exception of the possibility of conflicts developing in the future due to his position as Trustee for all three corporations. This order, however, is limited to the appeal of the October 31 order, and this Court's ruling does not preclude the raising of this issue in further proceedings in regard to any subsequent orders, should said become necessary.

For the above reasons this Court declines to grant leave to file an appeal from an interlocutory order of the Bankruptcy Court for the Northern District of Oklahoma pursuant to 28 U.S.C. § 1334(b).

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of the Committee of Unsecured Certificate Holders of Republic Trust & Savings for leave to appeal the October 31, 1984 order of the Bankruptcy Court be and the same is hereby denied.

ORDERED this 5<sup>TH</sup> day of December, 1984.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE



FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC-5 1984

DENNIS S. WALDON,  
Plaintiff,

vs.

LARRY R. MEACHUM, et al.,  
Defendants.

No. 84-C-776-E

O R D E R

This matter is before the Court on the motion of defendants to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In support of their motion defendants argue that plaintiff's claim is barred by the applicable statute of limitations.

In Garcia v. Wilson, 731 F.2d 640 (10th Cir. 1984) the Tenth Circuit adopted a uniform characterization for all civil rights claims regardless of the underlying facts involved. The Court determined that civil rights actions are "in essence actions for injury to personal rights" and that therefore the state statute of limitations in regard to injuries to personal rights would be the applicable statute. In Oklahoma the most analogous statute is Title 12 O.S. 1981 § 95(3rd) which provides for a two-year limitation period for an injury to the rights of another. See Jackson v. Rider, No. 60,746, Okla. Ct. Appeals Division 2, October 23, 1984.


Even if this Court would apply a three-year limitation period to this action it would be barred. Plaintiff alleges that

he was denied due process by being placed in close custody pending investigation without a prior hearing, and that a disciplinary proceeding was not commenced within 72 hours of his being placed in close custody as required by Department of Corrections Rules. According to plaintiff's complaint, he was placed in close custody on December 19, 1980 for violation of the Department of Corrections rule against escape or walk away. His present complaint was filed on September 24, 1984, clearly outside any applicable statute of limitations.

In view of the plaintiff's untimely filing of this action, the Court finds that it is without jurisdiction to entertain this action and therefore must grant the motion of defendants to dismiss.

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of defendants to dismiss be and the same is hereby granted.

ORDERED this 5<sup>TH</sup> day of December, 1984.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GRANT FREDERICK GONYER, JR., )

Plaintiff, )

vs. )

No. 83-C-325-E

BLACK CLAWSON COMPANY, INC., )  
DILTS MACHINE WORKS DIVISION, )

Defendant, )

HOME INDEMNITY COMPANY, )

Intervenor. )

**FILED**

DEC - 5 1984


Jack C. Silver, Clerk  
U. S. DISTRICT COURT

AMENDED JUDGMENT

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiff Grant Frederick Gonyer, Jr. and Intervenor Home Indemnity Company take nothing from the Defendant Black Clawson Company, Inc., Dilts Machine Works Division that the action of Plaintiff and Intervenor against Black Clawson Company, be dismissed on the merits without prejudice to any further action of Defendant Georgia Pacific against Black Clawson, and that the Defendant Black Clawson Company, Inc., Dilts Machine Works Division recover of the Plaintiff Grant Frederick Gonyer, Jr. and Intervenor Home Indemnity Company their costs of action.

DATED at Tulsa, Oklahoma this 4<sup>TH</sup> day of ~~November~~ <sup>December</sup>, 1984.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

RECEIVED DEC 4 1984

FILED

DEC - 5 1984

IN THE UNITED STATES DISTRICT COURT FOR  
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

VANROUJAN MANDIKIAN, d/b/a  
GABY'S RESTAURANT,

Plaintiff,

vs

IVAN O. BOGGESE,

Defendant.

NO. 84-C-723-E ✓


ORDER TRANSFERRING CASE

This matter coming on pursuant to regular setting, the Defendant having filed his Motion for Transfer of action pursuant to 28 U.S.C.A. §1404 and the hearing being had on the Motion and the Plaintiff, through his attorneys, having stated that he has no objections to the transfer of the matter, and for further reason and grounds stated in the Motion, Brief and Affidavit of the Defendant attached to the Brief, the Motion to Transfer this cause to the United States District Court for the Northern District of Texas, Lubbock Division is granted.

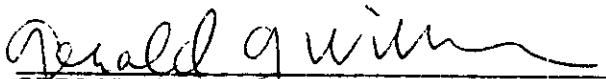
The above-captioned case is hereby transferred to the United States District Court for the Northern District of Texas, Lubbock Division, sitting at Lubbock, Texas.

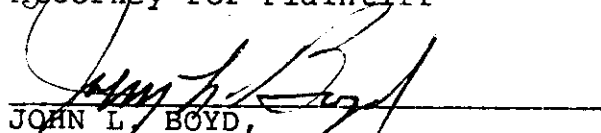
IT IS FURTHER ORDERED that the Clerk of this Court

transfer by mail, the pleadings filed to date, to the United States District Court for the Northern District of Texas, Lubbock Division forthwith.

  
UNITED STATES DISTRICT COURT JUDGE

APPROVED:

  
GERALD G. WILLIAMS,  
Attorney for Plaintiff

  
JOHN L. BOYD,  
Attorney for Defendant

4-92

*Entered*  
**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC - 5 1984

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

CATHY L. STANLEY,  
Plaintiff,

vs.

No. 83-C-25-E

TANK SERVICE, INC., a  
corporation,  
Defendant.


JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within six (6) months that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 4<sup>th</sup> day of December, 1984.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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**FILED**

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DEC - 4 1984

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANNY STEEL,

Defendant.

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

CIVIL ACTION NO. 84-C-543-E

ORDER OF DISMISSAL

Now on this 3rd day of December, 1984, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Danny Steel, be and is dismissed without prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

**FILED**

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DEC - 4 1984

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD E. WILLIAMS,

Defendant.

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

CIVIL ACTION NO. 84-C-491-E

ORDER OF DISMISSAL

Now on this 3rd day of December, 1984, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Edward E. Williams, be and is dismissed without prejudice.

S. JAMES C. LILSON

UNITED STATES DISTRICT JUDGE



1990

70-4-101

JOHN J. KELLY, CLERK  
U.S. DISTRICT COURT

NO. 84-C-699-E

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*[Handwritten signature]*

Randolph T. Stame

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STOCKTON OIL & GAS )  
COMPANY, INC., A )  
Colorado Corporation, and )  
W.T. SANDERS, )

Plaintiffs, )

vs. )

No. 84-C-356-E

ROBERT STANLEY )  
MILTENBERGER, JR., and )  
TERRENCE A. SANDERS, )

Defendants, )

vs. )

ODESSA SANDERS, )

Third Party )  
Defendant, )

vs. )

FIRST NATIONAL BANK & )  
TRUST CO., Ponca City, )  
Oklahoma, a National )  
Banking Association, )

Intervenor, )

vs. )

THE REMINGTON COMPANY, )  
an Arkansas Partnership; )  
CIMARRON VALLEY MACHINE, )  
INC., an Oklahoma )  
corporation; GOLDSTAR )  
DRILLING COMPANY, a )  
Delaware corporation; )  
H & S TANK TRUCKS, INC.; )  
DENNIS LEE and JAN LEE, )  
husband and wife; )  
SERVICE PERFORATORS, an )  
Oklahoma corporation; )  
SWINEA WELL SERVICE, INC. )  
an Oklahoma corporation; )  
and TIGER WELL SERVICE, )  
INC., an Oklahoma )  
corporation, )

Defendants, )

FILED  
IN OPEN COURT

DEC 3 1984

Jack C. Silver, Clerk  
U.S. DISTRICT C

and )  
 )  
THOMAS K. SANFORD, )  
 )  
Third Party )  
Defendant. )

O R D E R

NOW on this 3rd day of December, 1984, comes on for hearing before the undersigned, United States District Judge for the Northern District of Oklahoma the Application of Stockton Oil & Gas Company, Inc., a Colorado Corporation and W.T. Sanders, Plaintiffs for an Order dismissing their causes of action against the Defendants and each of them without prejudice to their rights to refile.

The Court being fully advised in the premises finds that the Application to Dismiss Without Prejudice should be and the same is herein sustained.

S/ JAMES O. ELLISON

---

JAMES ELLISON,  
JUDGE OF THE UNITED STATES  
DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STOCKTON OIL & GAS COMPANY, INC., )  
a Colorado Corporation, and )  
W. T. SANDERS, )

Plaintiffs, )

vs. )

ROBERT STANLEY MILTENBERGER, JR., )  
and TERRENCE A. SANDERS, )

Defendants, )

vs. )

ODESSA SANDERS, )

Third Party Defendant, )

vs. )

FIRST NATIONAL BANK & TRUST CO., )  
Ponca City, Oklahoma, a National )  
Banking Association, )

Intervenor, )

vs. )

THE REMINGTON COMPANY, an )  
Arkansas Partnership; )  
CIMARRON VALLEY MACHINE, INC., )  
an Oklahoma corporation; )  
GOLDSTAR DRILLING COMPANY, a )  
Delaware corporation; H & S TANK )  
TRUCKS, INC.; DENNIS LEE and )  
JAN LEE, husband and wife; )  
SERVICE PERFORATORS, an )  
Oklahoma corporation; SWINEA )  
WELL SERVICE, INC., an Oklahoma )  
corporation; and TIGER WELL )  
SERVICE, INC., an Oklahoma )  
corporation, )

Defendants, )

and )

THOMAS K. SANFORD, )

Third Party Defendant. )

FILED  
IN OPEN COURT

DEC 3 1984

Jack C. Silver, Clerk  
U. S. DISTRICT C

No. 84-C-356-E

ORDER OF DISMISSAL

This matter came on for hearing on the 3<sup>rd</sup> day of December, 1984, pursuant to the Motions of Defendants, Robert Stanley Miltenberger, Jr. and Terrence A. Sanders, and Intervenor, First National Bank & Trust Company, Ponca City, Oklahoma, to voluntarily dismiss, pursuant to Fed. R. Civ. P. 41(a)(2), certain causes of action herein. The Court, having heard the announcements of counsel, and being fully advised of the premises herein, finds that the parties have agreed to voluntarily dismiss certain causes of action herein as follows:

1. The counterclaims of Defendant, Robert Stanley Miltenberger, Jr., against Intervenor, First National Bank & Trust Company, Ponca City, Oklahoma, are to be dismissed with prejudice.

2. The Third Party Complaint of Defendant, Robert Stanley Miltenberger, Jr., against Third Party Defendant, Thomas K. Sanford, is to be dismissed with prejudice.

3. The counterclaims of Defendant, Terrence A. Sanders, against Intervenor, First National Bank & Trust Company, Ponca City, Oklahoma, are to be dismissed with prejudice.

4. The claims of Intervenor, First National Bank & Trust Company, Ponca City, Oklahoma, against Defendants, Robert Stanley Miltenberger, Jr. and Terrence A. Sanders, are to be dismissed with prejudice.

5. The Cross-Claim of Intervenor, First National Bank & Trust Company, Ponca City, Oklahoma, against Third Party Defendant, Thomas K. Sanford, is to be dismissed without prejudice.

The Court further finds that the voluntary dismissal of certain causes of action as set forth hereinabove shall have no effect on any other causes of action asserted by Defendants, Robert Stanley Miltenberger, Jr. and Terrence A. Sanders, or Intervenor, First National Bank & Trust Company, Ponca City, Oklahoma, against any other party to this action.

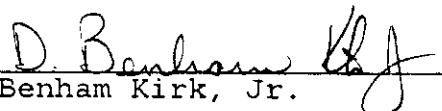
The Court further finds that Defendants, Robert Stanley Miltenberger, Jr. and Terrence A. Sanders, Intervenor, First National Bank & Trust Company, Ponca City, Oklahoma, and Third Party Defendant, Thomas K. Sanford, should each bear his own costs and attorneys' fees with respect to the claims, counter-claims, third party claims and cross-claims dismissed pursuant to this Order.

IT IS SO ORDERED.

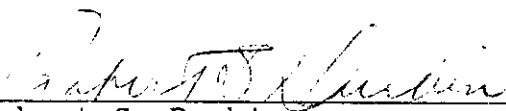
  
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:

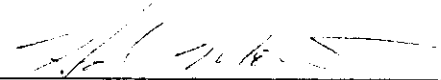
ARMSTRONG, BURNS, BAUMERT & CUMMINGS

By   
D. Benham Kirk, Jr.

ATTORNEYS FOR INTERVENOR  
FIRST NATIONAL BANK & TRUST COMPANY,  
PONCA CITY, OKLAHOMA

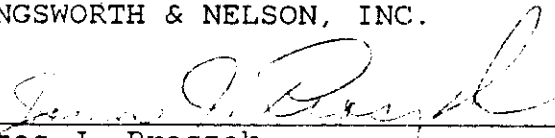
  
Robert S. Durbin  
ATTORNEY FOR DEFENDANT  
TERRENCE A. SANDERS

CHAPEL, WILKINSON, RIGGS, ABNEY & HENSON

By   
Hal F. Morris

ATTORNEYS FOR DEFENDANT  
ROBERT S. MILTENBERGER, JR.

HALL, ESTILL, HARDWICK, GABLE,  
COLLINGSWORTH & NELSON, INC.

By   
James J. Proszek

ATTORNEYS FOR THIRD PARTY DEFENDANT  
THOMAS K. SANFORD

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STOCKTON OIL & GAS COMPANY,  
INC., and W. T. SANDERS,

Plaintiffs,

vs.

ROBERT STANLEY MILTENBERGER,  
JR., AND TERRENCE A. SANDERS,

Defendants,

vs.

ODESSA SANDERS,

Third Party Defendant,

vs.

FIRST NATIONAL BANK & TRUST CO.  
Ponca City, Oklahoma, a  
national banking association,

Intervenor,

vs.

THE REMINGTON COMPANY, et al.,

Defendants.

No. 84-C-356-E

**FILED**  
IN OPEN COURT

DEC 3 1984

Jack C. Silver, Clerk  
U. S. DISTRICT C

JUDGMENT DISMISSING ACTION

BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of



the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains limited jurisdiction pursuant to the settlement agreements entered by and between the parties to vacate this Order and to reopen the action upon cause shown within one year that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 3<sup>RD</sup> day of December, 1984.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE